United States Court of Appeals
for the Second Circuit

APPENDIX

77-5013

B

United States Court of Appeals

FOR THE SECOND CIRCUIT

◆

THE BOHACK CORPORATION,

Plaintiff-Appellee-Appellant,

—against—

TRUCK DRIVERS LOCAL UNION NO. 807, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, *et al.,*

Defendants-Appellants-Appellees.

UNITED STATES COURT OF APPEALS
FILED
SEP 16 1977
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

JOINT APPENDIX

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Docket Entries

~~77-C-244~~
~~77~~-C-245

DIST. NO. 207	DIV. NO. 1	DOCKET NO. 74-B-933

NAME OF BA[illegible]
Last [illegible] Middle

THE LOHACK [illegible]

I.D. 11-0550780

CHAPTER OR SECTION	XI Sec.322
PETITION FILED	7/30/74
DATE CLOSED	
DISCHARGE	☐ Granted ☐ Denied ☐ Waived
DATE DISCHARGED	
PETITION DISMISSED?	☐ YES
DATE DISMISSED	
CHAPTER UNDER WHICH CASE WAS PENDING WHEN DISMISSED	
NAME OF DISTRICT JUDGE	
NAME OF BANKRUPTCY JUDGE	C. ALBERT PARENTE

CHECK IF:
☒ Voluntary
☐ Involuntary
☐ Fee paid in installments
☒ Corporation

OCCUPATION (Check one):
☐ Farmer
☐ Employee
☐ Professional
☐ Other (Non-business)
☒ Merchant
☐ Manufacturer
☐ Other (Business)

ADDRESS OF BANKRUPT/DEBTOR(Number and Street)
48-25 Metropolitan Ave

CITY	ZONE	COUNTY	STATE
QUEENS		QUEENS	N.Y.

	NAMES AND ADDRESSES
ATTORNEY FOR BANKRUPT OR DEBTOR	BLUMBERG, SINGER, ROSS, GOTTESMAN & GORDON(682-7700) 245 Park Ave, N.Y., N.Y.10017 & J. STANLEY SHAW (838-7122)
ATTORNEY ~~[illegible]~~ CREDITORS	ROBERT JAY DINERSTEIN, Seventy-One South Central Ave., Valley Stream, N.Y., 11580 retained to represent interests of Mr. Paterson.
~~RECEIVER~~	SHAW & LEVINE, ATTYS. FOR DEBTOR-PLAINTIFF, 770 Lexington Ave., New York, N.Y., 10021 (838-7127) RICHARD HALPERN, P.C., 285 Madison Ave. New York, N.Y. 10017, Atty. for FOUR STAR FEEDING CORP., 25 Arion Pl., Bklyn, N.Y.)
ATTORNEY FOR RECEIVER	
TRUSTEE	
ATTORNEY FOR TRUSTEE	

CHANGES OF PRINCIPALS

DATE	PROCEEDINGS
7/30/74	Debtor's Petition, List of Creditors, Affidavit pursuant to Rule XI-2, Corporate Resolution filed and referred to : Bankruptcy Judge C. Albert Parente-7/30/74). (1)
7/30/74	Copies mailed to S.E.C. , S.T. & D.I.R. Original and copy sent to Judge C. Albert Parente.
11/14/74	Appeal to District Court from order of Parente, B.J., dated Sept. 30, 1974 denying motion for an order under B.R. 923 & FRCP 59 and B.R. 924 and FRCP granting applicant a new trial and Order dated Sept. 30, 1974 designating creditors committee and standby trustee, etc. filed. ASSIGNED TO: MISHLER, CH.J. (2)

FORM BK 74
OCT. 1973

UNITED STATES DISTRICT COURTS
BANKRUPTCY DOCKET

☒ CHECK THIS BOX IF FILING FEES WERE PAID IN FULL AT THE TIME OF FILING

12/17/74	Appellant s Brief filed. (Robert P. Herzog. Esq. Aty. for appellants) (3)
12/20/74	By Mishler, Ch.J.-Order filed stipulating that the hearing on appeal from decisions and order of Parente, B.J., dated Sept. 3, 1974 and Sept. 30, 1974 be adj. from 12/20/74 to Jan. 17, 1975 at 2:00 P.M. Appellees to serve and file briefs on or before 1/6/75 and appellant on or before 1/16/75. (4)
1/3/75	Answer of Alfred I. Gold filed by Berger & Tischler, Attorneys for Alfred I. Gold. (5)
1/7/75	Certified copy of of order of Bankruptcy Judge C. Albert Parente filed directing that Plaintiff recover of defendant the sum of $3,111.25 with lawful interest and Costs to be computed, etc. (THE BOHACK CORPORATION PLTFF. AND OMEGA SPORTS LTD., DEFT.) (entry made pursuant to instructions from Bank.J.Parente)SH (6)
1/14/74	By Dooling, J.- Order to show cause filed returnable Jan. 17, 1975 at 2:00 P.M. why an order should not be made and entered dismissing the appellant's appeal from orders on the ground that such appeal was brought without authority from D-Cpn Ind. the appellant, & thus improperly instituted by the attorney for D-Con Inc., etc. (7)
1/14/75	By Mishler, Ch. J. Order filed for issuance of subpoena and examination of Carolyn Andrews and D. LOI & SONS, INC., by its Vice President, Andrew Manca, before Hon. Jacob Mishler, Chief Judge of this Court, in Courtroom 5 of the U.S.Courthouse, 225 Cadman Plaza East, Brooklyn, New York, on January 17, 1975, at 2:00 o'clock in the afternoon to give testimony with respect to the assignment of the claim of D. Loi & Sons, Inc., etc. (7ai)
/15/75	Notice of Cross-Motion filed returnable Jan.17, 1975 at 2:00 P.M. why an order should not be made denying the application of creditors committee, dated 1/10/75 etc. (8)
/15/75	By Mishler, Ch. J. - Order to show cause filed why a certain subpoena dated Jan. 14, 1975 served on applicant, Carolyn Andrews, should not be quashed, etc. and that service be made on or before Jan. 16, 1975, at 1:00 o'clock in the afternoon, etc. (9)
/17/75	Brief of Appellee, Creditors' Committee filed by Finkel, Nadler & Goldstein and Otterbourg, Steindler, Houston & Rosen, P.C. (10)
/17/75	Brief of Appellee, Creditors' Committee in Support of Motion to Dismiss Appeal of The D-Con Company, Inc. and in Opposition to Substitution of, or intervention by, Carolyn Andrews as Appellant filed by Finkel, Nadler & Goldstein, Attys., et al (11)
1/17/75	Affidavit of Martin I. Shelton, member of the firm of Shea Gould Climenko Kramer & Casey, Attorneys for Manufacturers Hanover Trust Company and Security National Bank, in opposition to the "Cross-Motion" of Carolyn Andrews, etc. granting her leave to be substituted in place of the D-Con Com (12)

Docket Entries

THE BOHACK CORPORATION

MISHLER, J.

74-B-933
DOCKET NUMBER

DATE	PROCEEDINGS
1/17/75	Before Mishler, Ch.J.-Hearing on the appeal from the decisions & orders of Hon. C.A. Parente, U.S. Bankruptcy Judge, dated Sept. 3, 1974 & Sept. 30, 1974 be adjourned from Dec. 20, 1974 to Jan. 17, 1975. Case called. Hearing held & concluded. Decision reserved.
1/17/75	Before Mishler, Ch.J.- Hearing for the taking of testimo of Carolyn Andrews & D.Loi & Sons,Inc. by its V.P. Andre Manea,etc. with reference to the assignment of claim of D.Loi & Sons,Inc. etc. Case called. Hearing held. Carolyn Andrews sworn to testify in the hearing examinati by Mr. Duberstein. Hearing concluded. Decision reserve
1/17/75	**Before Mishler, Ch. J. - Bankruptcy hearing why an order should not be made dismissing Appellant's Appeal,etc. Case Called - Motion Argued - Decision reserved.**
1/17/75	**Before Mishler, Ch. J. - Notice of Cross-Motion why an order should not be made denying the application of the Creditors Committee of the Bohack Corp., dated Jan. 10, 1975, etc. Case Called - Motion argued to quash subpoena dated 1/14/75 is denied. Decision reserved on Cross-Motion.**
1/23/75	Certified copy of order of Parente, B.J., that The Bohack Corp. recover of Metropolitan Armored Corp., the sum of $1,662.29 etc. filed. (13)
******* 1/28/75	**Copy of Schedules received and filed. (Listing of employees- 2 ledgers.) (Listing of all vendors for accounts payable) (Listing of accounts payable vouched by vendor) (14) (Statement of Affairs)**
1/29/75	**By Mishler,CH.J.- Memorandum of Decision and order filed. Forthe reasons stated the Court finds Ms. Andrews' interest insufficient to permit her to intervene as appellant. FRCP 24. The appeal of D-Con is dismissed and the motion for substitution and intervention are denied and it is SO ORDERED. (15)**
2/3/75	**By Parente.,B.J.- Order filed that The Bohack Corp. recove of R.N.H. Management Co.,Inc. the sum of $19,353.04 and Clerk of Court is directed to docket this judgment. (16)**
2/7/75	Certified copy of order of Parente,B.J.,dated 1/6/75 that plaintiff recover of defendant Herbert Woods the sum of $1,125.00,etc. (17)
2/7/75	Certified copy of Bankruptcy Judge's order dated Feb. 6, 1975 filed that the plaintiff, The Bohack Corporation, recover of the Defendant, Wordsworth Books, Inc., the sum of $5,652.64. (18)

DATE	PROCEEDINGS
2/18/75	Certif[illegible] of Parente, B.J., dated 1/6/75 that Boh[illegible] recover of defendant, John FALCONE and JOHNMART APPL[illegible] the sum of $2,248.79,etc. filed. (19)
2/18/75	Certified copy [illegible] of Parente, B.J., dated 1/5/75 that Boh[illegible] recover of defendant Ernest Tripp the sum of [illegible], etc. filed. (20)
2/26/75 +	Notice of Appeal filed. (Carolyn Andrews appeals from decision of Judge Mishler dated 1/29/75)(Notified U.S. Court of Appeals,Judge Parente,Shea,Gould, Climenko & Kramer, Esqs., Blumberg,Singer,Ross,Gottesman & Gordon,Esqs., Finkel & Nadler & Goldstein,Esqs., Otterbourg,Steindler,Houston & Rosen, Esqs., and Ms.Carolyn Andrews) &c. (21)
3/5/75	C.C. of order of Parente,B.J.,dated 1/6/75 that Bohaak Corp recover of defendant JOHN FALCONE ths sum of $2248.79 etc. filed. (22)
3/13/75 *	Notice of Appeal filed from the order of Parente,B.J.dated Feb. 20, 1975(by THE BOHACK CORP.) (23) ASSIGNED TO:
3/21/75 *	Before Mishler,J.-Argument on the appeal from the order of Bank.J. C. Albert Parente, dated Feb. 20, 1975,etc. Hearing ajd. to 4/18/75 at 2:00 P.M.
3/27/75	Appellant's Brief filed.(J. Stanley Shaw,Esq.) (24)
3/31/75 +	Cert. copy of order of U.S.C.C.A. filed that the appeal from the order of U.S.D.C. for the E.D.N.Y. is dismissed. (Carolyn Andrews, Appellant.) (Copy sent to Parente) HC (25)
4/21/75	* Stenographer's Minutes dated 4/18/75 re: severance pay, etc. filed. (26)
4/21/75 *	By Mishler,CH.J.- Memorandum of decision filed re: appeal from the order by Parente,B.J.,dated 2/20/75 in favor of Gen.Warehousemen's Union,Local #852,etc. directing debtor to pay the sum of $43,526.49 as an expense of administration. The order is affirmed. (27)
4/18/75	Before Mishler, Ch. J. - Case Called - Argument held on the Appeal from the Order of Bankruptcy Judge C. Albert Parente dated 2/20/75. Decision reserved.
4/28/75	(Re: Severence pay accrued in sum of $43,526.49,etc)By Mishler, Ch. J. - Letter to Shaw & Levine, Attorneys,in reply to letter of April 22, 1975, etc. "A formal stipulation may be entered into agreeing that the decision is binding as to all the warehousemen similarly situated. I will thereupon incorporate the stipulation in a footnote to the order already made. It can then be presented to the Court of Appeals in that form". filed. (#28)

Docket Entries

DOCKET NUMBER

DATE	PROCEEDINGS
5/21/75	Notice of Appeal filed from the order affirming an order of the Hon. C.Albert Parente, Bank.J., entered in this action by Judge Mishler on April 21, 1975.(Appeal of General Warehousemen's Union,Local #852,etc.)(copies sent to U.S. [illegible] and Bank.J.Parente) 34· (29)
5/21/75	Certified copy of order of Parente, B.J., dated 5/15/75 that plaintiff recover of defendant Edward Gelb $57,978.66. (#30)
5/28/75	By Mishler, Ch.J. - (Insert to be added to original Memorandum of Decision dated April 21, 1975) By stipulation dated April 29, 1975, the parties agree that the final determination in this proceeding shall bind all members of the Union similarly situated, and in the event the Union prevails the total amount due the class from the debtor in possession is in the sum of $607,511.60 filed.(see entry #27) (27A)
5/30/75	Notice of Appeal to District Court (by Mott's Shop-Rite of Derby,Inc.) from order of Parente,B.J. dated April 15, 1975. Previously assigned to MISHLER, CH.J. (31)
6/13/75	By Mishler, Ch. J. - Order filed extending time to file Briefs on Appeal(Mott's Shop-Rite of Derby,Inc.) is as follows:- (1) Time for the Appellant to serve and file its brief is extended to July 15, 1975 (2) Time for the Appellee to serve and file its brief is extended to July 30, 1975 (3) Time for appellant to serve and file a reply brief is extended to August 4, 1975. (32)
7/23/75	By Mishler,CH.J.- Order to show cause filed why a preliminary injunction should not be stayed and suspended during the pendency of an appeal,etc. (re: Truck Drivers Union,Local807)Returnable 8/1/75 at 11:00 A.M. (33)
7/24/75	By Mishler,J-OSC ret.8/1/75 why appeal of DryDock should not be dism. 33A
7/24/75	By Mishler,CH.J.- Order filed that the BOHACK CORPORATION defendant-appellant be permitted to file its Notice of Appeal nunc pro tunc as of May 22, 1975. (34)
7/29/75	Original Papers on Appeal consisting of docket sheets A-E and papers 1-15 sent to Clerk,U.S.C.C.A. together with Index in triplicate.
7/29/75	Memorandum of the Bohack Corp. filed.(Kelley,Drye & Warren, Esqs.) (35)
7/30/75	Reply Brief of The Bohack Corporation filed.(re: Show cause to Stay Preliminary Injunction returnable 8/1/75) (36)
7/31/75	Letter received from Bankruptcy Judge C. Albert Parente dated July 30, 1975 filed withdrawing Appeal of Mott's

DATE	PROCEEDINGS
	Shop[illegible] as per copy of Notice of Settle[illegible] signed by Judge Parente on July 28, 1975. (37)
7/31/75	[illegible] 8/1/75 filed. (38)
8/1/75 ✓	Receipt filed from [illegible], U.S.C.C.A. acknowledging record on appeal. (39)
8/1/75	Before Mishler,CH.J.-Hearing on OSC why a preliminary injunction should hot be stayed & suspended during the pendency of an appeal,etc. Case called. Motion argued. Decision reserved.
11/19/75	By Mishler,CH.J.- Memorandum of Decision and order filed. The Bankruptcy Court does not have jurisdiction over labor disputes. The preliminary injunction order of July 16, 1975 is reversed.It is ORDERED that 1() the preliminary injunction order is vacated.2) under 75-C-905)., 3) The issue of the advisability of granting the debtor leave to arbitrate is remanded to the Bankruptcy Court ~~for~~ proceedings consistent with this opinion. (40) Court will hear Bohack's motion for a preliminary injunction under 75-C-1191 on 11/26/75 at 10A.M. The court has this day signed a temporary restraining order pending determination of that motion. (filed in 75-C-905). [illegible] 33A35, [illegible] with all [illegible]) NC
2/19/75	Order of U.S.C.C.A. dated 12/12/75 filed that the order of District Court is affimed on the authority of Straus-Duparquet Inc. v.Local Union No. 3 International Brotherhood of Electrical Workers, AF of L,CIO,386 F2d 649,(2nd Cir.1967) (40)
1/19/76	Cert. copy of above order of U.S.C.C.A received with attached statement of costs to THE BOHACK CORPORATION in the sum of $170.72 filed. ---------------- (41a)
4/20-76	By Parente,B.J. -Certf.copy of order dated 4-1-76 that Schedule A-3 is amended to include names & addresses of holders of all 6% Convertible Subordinated Debentures due 2/1/93 and of all holder of the 7½% due 12=1=2003 etc. filed. (42)
4-26-76	Cert.copy of Judgment signed by Parente,B.J.,dated 4-26-76 that debtor have judgment against Penthouse Furniture & Carpet,Inc. in the sum of $19,541.45 filed. (43)

Docket Entries

DOCKET NUMBER

DATE	PROCEEDINGS
5/5/7[illegible]	[illegible] from Clerk, U.S.C.C.A. acknowledging [illegible] Appeal. (General Warehousemen's Union [illegible]) (#44)
5/20/76	Notice [illegible] District Court (by STALTAC ASSOCIATES and J[illegible]) from order of Parente, B.J., dated March 19, 1976 filed. ASSIGNED TO: MISHLER, J. (#45)
6/4/76	Before Mishler, CH.J.- Appeal hearing. Hearing ajd. to 6/18/76.
6/10/76	Appellants' Brief filed by Rosenberg & Rosenberg, Attys. for Staltac Associates, et al. (#46)
6/16/76	Brief for Plaintiff-Appellee filed by Shaw and Levine Attys. for Plaintiff-Appellee, The Bohack Corporation. (#47)
6/18/76	Before Mishler, Ch. J. - Case Called - Appeal argued as to decision of Judge Parente. Decision Reserved.
8/2/76	By Mishler, CH, J. Memordandum of Decision and order filed. re: executory contracts. The order of the Bankruptcy Court dated March 19, 1976 is affirmed, and it is SO ORDERED. (copy sent to [illegible] - 8/5/76 - NC (#49)
* 8/5/76	Notice of Appeal to District Court (by Truck Drivers Local Union No. 807) from order of Parente, B.J., dated May 28, 1976 filed. ASSIGNED TO: (#50) (~~77C-244~~)
8/11/76	Letter from Robert Jay Dinerstein, Attorney, dated Aug. 5, 1976 filed indicating that Robert Jay Dinerstein will represent the interest of Mr. Paterson. (#51)
8/18/76	By Mishler, Ch. J. - Memorandum Scheduling of Review filed. Hearing on Appeal adjourned to September 17, 1976, at 2:00 P.M. (copy mailed to Bk.J.Parente)SH (#52)
9/17/76	**Before Mishler, CH.J.- Above hearing adjourned without date.** (notified [illegible] NC)
11/4/76	C.C. of order of Bank. J. Parente dated 10/20/76 filed that BOHACK CORP. recover of defendant DEERFIELD CARDS, INC., the sum of $3,397.87. #53
11/4/76	C.C. of order of Bank. J. Parente dated 10/20/76 filed that BOHACK CORP. recover of defendant FISCHER'S CHILDREN'S WEAR, INC., the sum of $4,623.38. #54
11/4/76	C.C. of order of Bank. J. Parente dated 10/20/76 filed that BOHACK CORP. recover of defendant HERRICK'S JEWELERS, LTD., the sum of $2,966.10. #55

DATE	PROCEEDINGS
11/4/76	C.C. of order of Bank. J. Parente dated 10/20/76 filed that BOHACK CORP., recover of defendant JEANS 'N THINGS, INC., the sum of $1,702.20. #56
11/4/76	C.C. of order of Bank. J. Parente dated 10/20/76 filed that BOHACK CORP., recover of defendant KORE NATURAL FOODS, INC., the sum of $4,048.21. #57
11/4/76	C.C. of order of Bank. J. Parente dated 10/20/76 filed that BOHACK CORP., recover of defendant LUZI CONSTRUCTION CO. INC., the sum of $5,611.38. #58
11/4/76	C.C. of order of Bank. J. Parente dated 10/20/76 filed that BOHACK CORP., recover of defendant POPPY'S PET TOWN, INC., the sum of $2,448.74 #59
11/4/76	C.C. of order of Bank. J. Parente dated 10/20/76 filed that BOHACK CORP., recover of defendant GIACOMINO CUTRUZZOLA D/B/A NINO'S LAUNDROMAT the sum of $66.14. #60
11/4/76	C.C. of order of Bank. J. Parente dated 10/20/76 filed that BOHACK CORP., recover of defendant RADIO SHACK, DIVISION OF TANDY CORPORATION the sum of $97.29. #61
11/4/76	C.C. of order of Bank. J. Parente dated 10/20/76 filed that BOHACK CORP., recover of defendant THE 1776 CRAFTERS, LTD., the sum of $7,115.64. #62
11/4/76	C.C. of order of Bank. J. Parente dated 10/20/76 filed that BOHACK CORP., recover of defendant UNISEX KLIPPER, LTD., the sum of $439.33. #63
11/4/76	C.C. of order of Bank. J. Parente dated 10/20/76 filed that BOHACK CORP., recover of defendant VILLA LIQUORS, LTD., the sum of $1,694.43. #64
11/4/76	C.C. of order of Bank. J. Parente dated 10/20/76 filed that BOHACK CORP., recover of defendant WILLIAM SCUDERO the sum of $1,329.00. #65
12/3/76	Notice of Appeal to District Court (By Truck Drivers Local Union No. 807, I.B.T., etc) from order of Parente, B.J., dated Oct. 15, 1976 filed. ASSIGNED TO: MISHLER, #66 (~~772-245~~)
12/17/76	Before Mishler, Ch. J. - Hearing on the Appeal from Bankruptcy Judge C. Albert Parente's order, entered May 28, 1976. Case Called - Hearing adjd. to 1/21/77 on consent. (Local #807)
1/31/77	Before MISHLER, CH J - Hearing on the appeal from Bank. J Albert Parente's order, entered May 28, 1976. Hearing adjd to 2/18/77 on consent.

THE BOHACK CORPORATION

Docket Entries

74-B-933
DOCKET NUMBER

DATE	PROCEEDINGS
2/9/77	Letter dated 2/8/77, hand delivered to Mishler, CH, J. from Shaw & Levine, ESQS. enclosing Bohack's answering brief which is on for argument on Feb. 18, 1977 at 10:00 A.M. filed. (#67) (vs.defts. Truck Drivers Loc.Un.#807, Int'l Bro. of Teams,
2/11/77	Plaintiff's Memorandum of Law filed by Shaw & Levine, Attorneys for Debtor. (#68)
2/18/77	Before Mishler, Ch. J. - Hearing on Appeal from order of Bank. J. Parente dated May 28, 1976. Case Called - Motion argued as to the ordersof Judge C. Albert Parente Dated Oct. 15, 1976, May 28, 1976 and Oct. 21, 1976. Decision Reserved.
4/22/77	Notice of Appeal to District Court from order of Bank. J. Parente dated February 23, 1977 filed by International Sheridan Square, Inc., et al. ASSIGNED TO: (#69) ~~(77-C-843)~~ MISHLER, J.
4/22/77	By Mishler, Ch. J. - Memorandum of Decision dated April 21, 1977 filed. The order of bankruptcy court allowing rejection is affirmed. The October 21 arbitration order is affirmed, etc. The order of October 15 is reversed and vacated. (#70)
4/26/77	By Mishler, Ch. J. - Memorandum of Decision dated April 26, 1977 filed. The following footnote to be added to opinion of April 21, 1977, at the end of the first sentence of the first full paragraph on page 28: "Although the parties filed a notice of appeal from the orders of October 15 and 21, those orders did not directly involve the rejection of the Contract. The May 28 order allowing rejection was immediately appealed to this Court, and remained pending until this proceeding. Accordingly, this memorandum affirms the May 28 order". (Copies sent to all Bank.Judges)S.H. (#71)
5/5/77	C.C. of order of Bank.J. Parente dated May 4, 1977 filed that plaintiff THE BOHACK CORPORATION enter judgment against FOUR STAR SCHOOL FEEDING CORP., Defendant, in the sum of $94,844.16. (72)
5/4/77	By Mishler, Ch. J. - Order dated May 4, 1977 filed. Ordered that the order of May 28 is affirmed; and it is further Ordered that the order of October 21, 1976, is affirmed, etc. and it is further Ordered that the order of October 15, 1976, is reversed and vacated. (73)
5/6/77	Before Mishler, Ch.J. - Hearing withdrawn per telephone - Letter re: status of appeal to follow.
5/6/77	Letter from Farber, Raucher, Goldberg & Ehrlich, P.C., withdrawing appeal of International Sheridan Square, Inc. (73a filed (papers returned to B.J.Parente May 11, 1977)SH [illegible]

FORM BK 74-E
SEPT. 1962

UNITED STATES DISTRICT COURT

Docket Entries

DATE	PROCEEDINGS
5/10/77	[illegible] (Order of Chief Judge Jacob Mishler [illegible] 1977)(Copy mailed to Clerk, (74) U.S.Ci[illegible] Appeals 5/10/77)(SH)(Copy mailed to Bank.J.[illegible] (O'Connor, Quinlan & Mangan, P.C., Attys. for De[illegible] .B.T.) [illegible]
5/[illegible]3/77	Order dated [illegible] U.S.C.C.A. that the above listed record on appeal be filed on or before 6/10/77 brief of appellee be filed on or before 8/11/77 Argument of the appeal be ready to be heard during the week of 8/29/77, etc. filed. (#75)
5/25/77	Notice of Appeal filed. (Order of Chief Judge Jacob Mishler, dated May 4, 1977, which order reversed and vacated that part of the order of Hon. C. Albert Parente, of October 21, 1976, which ordered that the arbitrator(s) shall proceed in accordance with the procedures set forth in Section 26, etc. (Shaw & Levine, Attys. for Plaintiff, The Bohack Corporation) ~~(77-6-244)~~ (Copies mailed (#76) to U.S.Circuit Court of Appeals and to Bank.J.C.Albert Parente 5/25/77)SH
5/31/77	Copy of Scheduling Order 2 received from U.S.C.C.A. Appellant's brief & joint appendix be filed on or before JULY 11, 1977. Brief of appellee on or before AUGUST 11, 1977. Argument of the appeal be ready to be heard during ~~week-of-~~AUGUST 29, 1977. (#77) RECORD ON APPEAL BE FILED ON OR BEFORE JUNE 24, 1977.
6/13/77	Copy of Scheduling Order 3 received from U.S.C.C.A, modifying Sch.Ord.2 above as follows: Record on appeal be filed on or before July 24, 1977. Appellant's brief & etc. -August 17, 1977 Appellee's brief on or before Sept. 16, 1977. Argument on appeal be ready to be heard week of 9/26/77. (#78)
7/29/77	Copy of Scheduling Order #4 received from U.S.C.C.A, modifying Sch.Order 3 above as follows:- Record on Appeal to be filed on or before Aug. 8, 1977. Appellant's brief & etc. - Aug. 31, 1977. Appellee's brief on or before Sept. 30, 1977. Argument on Appeal be ready to be heard week of 10/3/77/ (#79)

Notice of Grievance Dated December 16, 1974

New York City Joint Area Local Committee

EXHIBIT "A"

DATE RECEIVED ....

CASE NO. ....

FOR COMMITTEES' USE ONLY

DATE CASE HEARD ....

PRE-HEARING INFORMATION

In order that the Committee Members may be familiar with the important features in this case, will you kindly fill out the following form as completely as possible. The information submitted herein will be treated as a preliminary general statement of your position.*

1. Union Name Truck Drivers Local Union No. 807
   Address 32-43 49th Street, Long Island City, New York 11103
2. Name of Agent handling particular grievance John Hohmann
3. A. Name of Employee filing complaint ....
   B. Classification of Work ....
   C. Date of Employment ....
4. Name and Address of Carrier involved The Bohack Corporation
   48-25 Metropolitan Avenue, Brooklyn, New York 11237
5. Circumstances of the Dispute (Check one) ....
   A. Warning Notice .... C. Discharge ....
   B. Disciplinary time off .... D. Back pay claim ....
   E. Others Transferring or assigning of work
6. Date on which company took action against employee December 16, 1974
7. Indicate that part of contract which you claim was violated Article 32, Section 1 and Paragraph 2 of Rider Agreement
8. Date on which alleged violation took place December 16, 1974
9. Date on which grievance was first taken up with management December 16, 1974
10. Exact amount of back pay, if any, claimed by aggrieved employee ....
11. Your Position (Also include brief resume of pertinent facts — use back of sheet if necessary)
    As of December 16, 1974 The Bohack Corporation is using employees of Daitch Shopwell to deliver dairy and bakery products from a Daitch Shopwell warehouse to Bohack stores with equipment owned by Fleet Services of New York, Inc., a wholly owned subsidiary of The Bohack Corporation

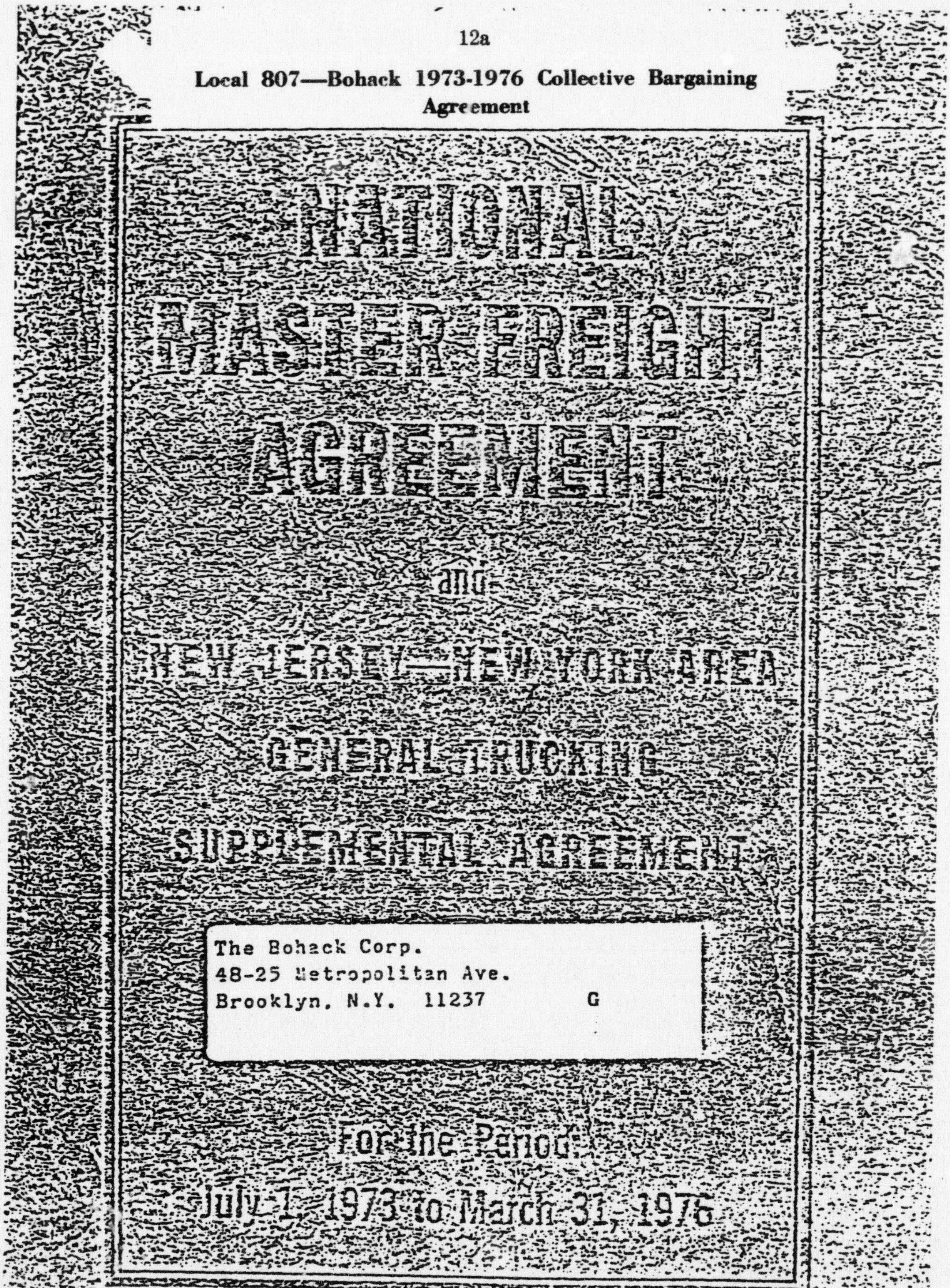
[illegible]

1st Copy – Mail to Union Co-Secretary
2nd Copy – Mail to Employer Co-Secretary
3rd Copy – Mail to Company involved
4th Copy – Local Union

John Hohmann
For the [illegible]

DATE December 16, 1974

Local 807—Bohack 1973-1976 Collective Bargaining Agreement



NATIONAL
MASTER FREIGHT
AGREEMENT

and

NEW JERSEY—NEW YORK AREA
GENERAL TRUCKING
SUPPLEMENTAL AGREEMENT

The Bohack Corp.
48-25 Metropolitan Ave.
Brooklyn, N.Y. 11237 G

For the Period
July 1, 1973 to March 31, 1976

Local 807—Bohack 1973-1976 Collective Bargaining Agreement

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Local 807--Bohack 1973-1976 Collective Bargaining Agreement

NATIONAL MASTER FREIGHT AGREEMENT

Covering
OVER - THE - ROAD
and
LOCAL CARTAGE
EMPLOYEES OF PRIVATE
COMMON, CONTRACT AND
LOCAL CARTAGE CARRIERS
For the Period of
JULY 1, 1973
through
MARCH 31, 1976

NATIONAL MASTER FREIGHT AGREEMENT COVERING OVER-THE ROAD AND LOCAL CARTAGE EMPLOYEES OF PRIVATE, COMMON, CONTRACT AND LOCAL CARTAGE CARRIERS

for the period of

July 1, 1973 through March 31, 1976

covering:

operations in, between and over all of the states, territories and possessions of the United States, and operations into and out of all contiguous territory.

The ....
(Company or Association)

hereinafter referred to as the "EMPLOYER,"

and

the TEAMSTERS NATIONAL FREIGHT INDUSTRY NEGOTIATING COMMITTEE of the INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, and Local Union No. ...., which Local Union is an affiliate of the INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, agree to be bound by the terms and conditions of this Agreement.

ARTICLE 1.

Parties to the Agreement

Section 1.

Employers Covered

The Employer consists of Associations, members of Associations who have given their authorization to the Associations to represent them in the negotiation and/or execution of this Agreement and Supplemental Agreements, and individual Employers who become signatory to this Agreement and Supplemental Agreements as hereinafter set forth. The signatory Associations enter into this Agreement and Supplemental Agreements as hereinafter set forth. The signatory Associations enter into this Agreement and Supplemental Agreements on behalf of their members under and as limited by their authorizations.

Section 2.

Unions Covered

The union consists of any Local Union which may become a party to this Agreement and any Supplemental Agreement as hereinafter set forth. Such Local Unions are hereinafter designated as "Local Union." In addition to such Local Unions, the Teamsters National Freight Industry Negotiating Committee of the International Brotherhood of Teamsters, hereinafter referred to as the "National Union Committee," is also a party to this Agreement and the agreements supplemental hereto.

Section 3.

Transfer of Company Title or Interest

This Agreement and the Supplemental Agreements hereto, hereinafter referred to collectively as "Agreement", shall be binding upon the parties hereto, their successors, administrators, executors and assigns. In the event an entire operation, or rights only, are sold, leased, transferred or taken over by sale, transfer, lease, assignment, receivership or bankruptcy proceedings, such operation or use of such rights shall continue to be subject to the terms and conditions of this Agreement for the life thereof.

On the sale, transfer or lease of an individual run or runs, or rights only, the specific provisions of this Agreement, excluding riders or other conditions, shall prevail. It is understood by this Section that the parties hereto shall not use any leasing device to a third party to evade this Agreement. In the event the Employer fails to require the purchaser, transferee, or lessee to assume the obligations of this Agreement, the Employer (including partners thereof) shall be liable to the Local Union and to the employees covered for all damages sustained as a result of such failure to require assumption of the terms of this Agreement, but shall not be liable after the purchaser, the transferee or lessee has agreed to assume the obligations of this Agreement.

When a signator to this Agreement purchases rights from another signator, the purchaser must accept the affected employees of the seller, in accordance with the provisions of Article 5, Section 3 before hiring any new employees. The applicable lay-off provisions of this Agreement shall apply. When rights are sold to a non-signator to this Agreement, and such purchaser is the sole bidder, the provisions of this Agreement shall not apply. However, in the event of multiple bids, one or more of such bidders being signator to this Agreement, and the seller elects to sell to a non-signator, then all of the provisions of Article 1, Section 3, shall apply.

The Employer shall give notice of the existence of this Agreement to any purchaser, transferee, lessee, assignee, etc., of the operation covered by this Agreement or any part thereof, including rights only. Such notice shall be in writing with a copy to the Local Union, at the time the seller, transferor, or lessor executes a contract or transaction as herein described. The Local Union shall also be advised of the exact nature of the transaction, not including financial details.

ARTICLE 2.

Scope of Agreement

Section 1.

Master Agreement

The execution of this Master Agreement on the part of the Employer shall cover all operations of the Employer which are covered by this Agreement, and shall have application to the work performed within the classifications defined and set forth in the Agreements supplemental hereto.

Section 2.

Supplements to Master Agreement

(a) There are several segments of the Trucking Industry covered by this Agreement and for this reason Supplemental Agreements are provided for each of the specific types of work performed by the various classifications of employees controlled by this Master Agreement.

All such Supplemental Agreements are subject to and controlled by the terms of this Master Agreement and are sometimes referred to herein as "Supplemental Agreements."

All such Supplemental Agreements are to be clearly limited to the specific classifications of work as enumerated or described in each individual Supplement.

(b) The parties shall establish four Conference Area Iron and Steel Agreements supplemental to the National Master Freight Agreement.

(c) The jurisdiction covered by the National Master Freigtht Agreement and its various Supplements thereto includes, without limitation, stuffing, stripping, loading and discharging of cargo or containers. This does not include loading or discharging of cargo or containers to or from vessels except in those instances where such work is presently being performed. Existing practices, rules and understandings, between the Company and the Union, with respect to this work shall continue except to the extent modified by mutual agrement.

Section 3.

Non-Covered Units

This Agreement shall not be applicable to those operations of the Employer where the employees are covered by a collective bargaining agreement with a Union not signatory to this Agreement, or to those employees who have not designated a signatory Union as their collective bargaining agent.

When a majority of the eligible employees performing work covered by an Agreement designated by the National Negotiating Committee to be Supplemental to the National Master Freight Agreement (to which their Employer is a prior signator in the case of designated office and garage supplements), execute a card authorizing a signatory Local Union to represent them as their collective bargaining agent at the terminal location, then, such employees shall automatically be covered by this Agreement and the applicable Supplemental Agreements. In such cases the parties may by mutual agreement negotiate wages and conditions, subject to Conference Joint Area Committee approval.

Notwithstanding the foregoing paragraph, the provisions of the National Master Freight Agreement and the applicable over-the-road and local cartage Supplemental Agreements shall be applied, without evidence of Union representation of the employees involved, to all subsequent additions to, and extensions of, current operations which adjoin and are utilized as a part of such current operation, and newly established terminals and consolidations of terminals utilized as part of such current operation. The provisions of Article 32 (Subcontracting) shall apply to this paragraph.

Section 4.

Single Bargaining Unit

The employees, unions, employers and associations covered under this Master Agreement and the various Supplements thereto shall constitute one bargaining unit. It is understood that the printing of this Master Agreement and the aforesaid Supplements in separate Agreements is for convenience only and is not intended to create separate bargaining units.

This National Master Agreement applies to city and road operations, and other classifications of employment authorized by the signatory employers to be represented by Trucking Employers, Inc. and by other employers and Associations participating in national collective bargaining. The common problems and interests, with respect to basic terms and conditions of employment, have resulted in the creation of the National Master Freight Agreement and the respective Supplemental Agreements. Accordingly, the Associations and employers, parties to this Agreement, acknowledge that they constitute a single National multi-employer collective bargaining unit, composed of the associations named hereinafter and those employers authorizing such associations to represent them for the purpose of collective bargaining, and solely to the extent of such authorization, and such other individual employers which have, or may, become parties to this Agreement.

Section 5.

Riders

Riders or Supplements to this Agreement providing for better wages, hours and working conditions, which have been negotiated by Local Unions and Employers affected and put into effect, shall be continued, and shall be improved wherever required by the 1973 amendments to this Agreement except as to those better Riders which by agreement of the parties are subject to mutual agreement and adjustment on the supplemental area level. Such Riders, as improved, shall be submitted to the Conference Joint Area Committee for approval.

No new Riders or Supplements to this Agreement shall be negotiated unless approved by the Conference Joint Area Committee, if confined to that Conference Area, or by the National Grievance Committee if applicable to more than one Conference Area.

Riders to this Agreement and to Supplements thereto between Local Unions and Employers that do not meet the standards set forth in the National Master Agreement and Supplements thereto, shall be continued pending negotiations for amendment of such riders which negotiations shall be conducted and concluded within 90 days after July 1, 1973. In the event no agreement is concluded, the matter shall be referred during such period to the Conference Joint Area Committee, if confined to that Conference Area, or to the National Grievance Committee if applicable to more than one Conference Area, for final disposition. If the Conference Joint Area Committee or the National Grievance Committee as the case may be cannot finally dispose of the matter, such riders, and any other substandard Rider not submitted or approved, shall be null and void. However, wage and monetary matters negotiated in this Agreement shall become effective July 1, 1973.

ARTICLE 3.

Recognition, Union Shop and Check-Off

Section 1.

Recognition

(a) The Employer recognizes and acknowledges that the National Union Committee and Local Unions affiliated with the International Brotherhood of Teamsters are the exclusive representatives of all employees in the classifications of work covered by this Master Agreement, and Supplements thereto for the purpose of collective bargaining as provided by the National Labor Relations Act.

Subject to Article 2, Section 3 (Non-Covered Units), this provision shall apply to all present and subsequently acquired operations and terminals of the Employer.

This provision shall not apply to wholly-owned and wholly independently operated subsidiaries which are not under contract with local IBT unions. "Wholly independently operated" means, among other things, that there shall be no interchange of freight, equipment or personnel, or common use, in whole or in part, of equipment, terminals, property, personnel, or rights.

(b) All present employees who are members of the Local Union on the effective date of this subsection or on the date of execution of this Agreement, whichever is the later, shall remain members of the Local Union in good standing as a condition of employment. All present employees who are not members of the Local Union and all employees who are hired hereafter shall become and remain members in good standing of the Local Union as a condition of employment on and after the 31st day following the beginning of their employment or on and after the 31st day following the effective date of this subsection or the date of this Agreement, whichever is the later. An employee who has failed to acquire, or thereafter maintain, membership in the Union as herein provided, shall be terminated seventy-two (72) hours after his Employer has received written notice from an authorized representative of the Local Union, certifying that membership has been, and is continuing to be, offered to such employee on the same basis as all other members and, further, that the employee has had no-

tice and opportunity to make all dues or initiation fee payments. This provision shall be made and become effective as of such time as it may be made and become effective under the provisions of the National Labor Relations Act, but not retroactively.

(c) When the Employer needs additional men he shall give the Local Union equal opportunity with all other sources to provide suitable applicants, but the Employer shall not be required to hire those referred by the Local Union.

(d) No provision of this Article shall apply in any state to the extent that it may be prohibited by state law. If under applicable state law additional requirements must be met before any such provision may become effective, such additional requirements shall be first met.

If any agency shop clause is permissible in any state where the provisions of this Article relating to the Union Shop cannot apply, the following Agency Clause shall prevail:

(1) Membership in the Local Union is not compulsory. Employees have the right to join, not join, maintain, or drop their membership in the Local Union, as they see fit. Neither party shall exert any pressure on, or discriminate against, an employee as regards such matters.

(2) Membership in the Local Union is separate, apart and distinct from the assumption by one of his equal obligation to the extent

MASTER

that he receives equal benefits. The Local Union is required under this Agreement to represent all of the employees in the bargaining unit fairly and equally without regard to whether or not an employee is a member of the Local Union. The terms of this Agreement have been made for all employees in the bargaining unit and not only for members in the Local Union, and this Agreement has been executed by the Employer after it has satisfied itself that the Local Union is the choice of a majority of the employees in the bargaining unit. Accordingly, it is fair that each employee in the bargaining unit pay his own way and assume his fair share of the obligation along with the grant of equal benefits contained in this Agreement.

(3) In accordance with the policy set forth under subparagraphs (1) and (2) of this Section all employees shall, as a condition of continued employment, pay to the Local Union, the employee's exclusive collective bargaining representative, an amount of money equal to that paid by other employees in the bargaining unit who are members of the Local Union, which shall be limited to an amount of money equal to the Local Union's regular and usual initiation fees, and its regular and usual dues. For present employees, such payments shall commence thirty-one (31) days following the effective date or on the date of execution of this Agreement, whichever is the later, and for new employees, the payment shall start thirty-one (31) days following the date of employment.

(e) If any provision of this Article is invalid under the law of any state wherein this contract is executed, such provision shall be modified to comply with the requirements of State Law or shall be re-negotiated for the purpose of adequate replacement. If such negotiations shall not result in mutually satisfactory agreement, either party shall be permitted all legal or economic recourse.

(f) In those instances where subsection (b) hereof may not be validly applied, the Employer agrees to recommend to all employees that they become members of the Local Union and maintain such membership during the life of this Agreement, to refer new employees to the Local Union representative, and to recommend to delinquent members that they pay their dues since they are receiving the benefits of this Agreement.

(g) To the extent such amendment may become permissible under applicable Federal and State Law during the life of this Agreement as a result of legislative, administrative or judicial determination, all of the provisions of this Article shall be automatically amended to embody the greater

U[illegible] y provisions contained in the 1947-1949 Central States Area Over-the-Road Motor Freight Agreement, or to apply or become effective in situations not now permitted by law.

(h) Nothing contained in this section shall be construed so as to require the Employer to violate any applicable law.

Section 2.

Probationary and Casual Employees

A new employee shall work under the provisions of this Agreement but shall be employed only on a thirty-day trial basis, during which period he may be discharged without further recourse; provided, however, that the Employer may not discharge or discipline for the purpose of evading this Agreement or discriminating against Union members. After thirty days the employee shall be placed on the regular seniority list.

In case of discipline within the thirty-day period, the Employer shall notify the Local Union in writing.

Any employee hired as a casual or part-time worker shall not become a seniority employee under these provisions where it has been agreed by Employer and Union that he was hired for casual or part-time work. The words "casual" or "part-time" as used herein are meant to cover situations such as replacement for absenteeism and vacations.

Any employee hired as a casual or part-time worker shall not become a seniority employee until he meets the requirements of the appropriate Supplemental Agreement under which he is employed.

If employees are hired through an employment agency, the Employer is to pay the employment agency fee.

However, if the Local Union was given equal opportunity to furnish employees under Article 3, Section (1) (c), and if the employee is retained through the probationary period, the fee need not be paid until the 31st day of employment.

Section 3.

Check-Off

The Employer agrees to deduct from the pay of all employees covered by this Agreement the dues, initiation fees and/or uniform assessments of the Local Union having jurisdiction over such employees and agrees to remit to said Local Union all such deductions prior to the end of the month for which the deduction is made. Where laws require written authorization by the employee, the same is to be furnished in the form required.

The Local Union shall certify to the Employer in writing each month a list of its members working for the Employer who have furnished to the Employer the required authorization, together with an itemized statement of dues, initiation fees, (full or installment), or uniform assessments owed and to be deducted for such month from the pay of such member, and the Employer shall deduct such amount from the first pay check following receipt of statement of certification of the member and remit to the Local Union in one lump sum. The Employer shall add to the list submitted by the Local Union the names of all regular new employees hired since the last list was submitted and delete the names of employees who are no longer employed.

Where an employee who is on check-off is not on the payroll during the week in which the deduction is to be made or has no earnings or insufficient earnings during that week or is on leave of absence, the employee must make arrangements with the Local Union to pay such dues in advance.

The Employer will recognize authorization for deductions from wages, if in compliance with state law, to be transmitted to the Local Union or to such other organizations as the Union may request if mutually agreed to, except DRIVE deductions which shall be made annually. No such authorization shall be recognized if in violation of state or federal law. No deduction shall be made which is prohibited by applicable law.

In the event that an Employer has been determined to be in violation of this Article by the decision of an appropriate grievance committee, and if such Employer subsequently is in violation thereof after receipt of seventy-two (72) hours written notice of specific delinquencies, the Local Union may strike to enforce this Article. However, such strike shall be terminated upon the delivery thereof. Errors or inadvertent omissions relating to individual employees shall not constitute a violation.

Section 4.

Work Assignments

The Employers agree to respect the jurisdictional rules of the Union and shall not direct or require their employees or persons other than the employees in the bargaining units here involved, to perform work which is recognized as the work of the employees in said units. This is not to interfere with bona fide contracts with bona fide unions.

Section 5.

The term "Local Union" as used herein refers to the I.B.T. Local Union which represents the employees of the particular employer for the purpose of collective bargaining at the particular place or places of business to which this Agreement and the Supplements thereto are applicable, unless, by agreement of the Local Unions involved, or a Change of Operations Committee, jurisdiction over such employees, or any number of them, has been transferred to some other Local Union, in which case the term Local Union as used herein shall refer to such other Local Unions.

ARTICLE 4.

Stewards

The employer recognizes the right of the Local Union to designate job stewards and alternates from the Employer's seniority list. The authority of job stewards and alternates so designated by the Local Union shall be limited to, and shall not exceed, the following duties and activities:

(1) The investigation and presentation of grievances with his Employer or the designated company representative in accordance with the provisions of the collective bargaining agreement;

(2) The collection of dues when authorized by appropriate Local Union action;

(3) The transmission of such messages and information, which shall originate with, and are authorized by the Local Union

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or its officers, provided such message and information,

(a) have been reduced to writing; or,

(b) if not reduced to writing, are of a routine nature and do not involve work stoppages, slowdowns, refusal to handle goods, or any other interference with the Employer's business.

Job Stewards and alternates have no authority to take strike action, or any other action interrupting the Employer's business, except as authorized by official action of the Local Union. The Employer recognizes these limitations upon the authority of job stewards and their alternates, and shall not hold the Union liable for any unauthorized acts. The Employer in so recognizing such limitations shall have the authority to impose proper discipline, including discharge, in the event the shop steward has taken unauthorized strike action, slowdown or work stoppage in violation of this Agreement.

Stewards shall be permitted reasonable time to investigate, present and process grievances on the company property without loss of time or pay during his regular working hours without interruption of the Employer's operation by calling group meetings; and where mutually agreed to by the Local Union and Employer, off the property or other than during his regular schedule without loss of time or pay. Such time spent in handling grievances during the Steward's regular working hours shall be considered working hours in computing daily

and/or weekly overtime if within the regular schedule of the Steward.

ARTICLE 5.

Section 1. **Seniority Rights**

Seniority rights for employees shall prevail under this Agreement and all Agreements supplemental hereto. Seniority shall only be broken by discharge, voluntary quit, more than a three (3) year layoff, or for such greater period than three (3) years as a change of operations committee may direct during the third year as provided in Article 8, Section 6 herein, or as provided in any applicable provisions of the Supplemental Agreements. The extent to which seniority shall be applied and accrued as well as the methods and procedures of such application shall be clearly set forth in each of the Supplemental Agreements.

Section 2. The Employer shall not require, as a condition of continued employment, that an employee purchase truck, tractor and/or tractor and trailer or other vehicular equipment, or that any employee purchase or assume any proprietary interest or other obligation in the business.

Section 3. (a) In the event that the Employer absorbs the business of another private, contract or common carrier, or is a party to a merger of lines, the seniority of the employees absorbed or affected thereby shall be determined by mutual agreement between the Employer and the Unions involved.

In the application of this provision, the following general rules shall

apply when operations or terminals are merged, subject however to the provisions of Section 7 of this Article:

(1) The active seniority roster (excluding those employees on letter of layoff) of employees involved in the merger of terminals or operations are to be "dovetailed" by appropriate classification (i.e., road, city.) in the order of the last date of Company employment in such classification. In addition, the inactive seniority rosters (employees who are on letter of layoff) shall be similarly "dovetailed" by appropriate classification. The active merged seniority roster shall be utilized first to provide employment at the merged terminal or operation. If and when additional employees are required at the merged facility, they shall be recalled from the merged inactive roster and after recall such employees shall be "dovetailed" into the active roster with full seniority. Seniority rosters previously combining job classifications shall be continued unless agreed otherwise.

In the application of this rule, it is immaterial whether the transaction is called a merger, purchase, acquisition, sale, etc. It is also immaterial whether the transaction involves merely the purchase of stock of one corporation by another, with

two separate corporations continuing in existence, and it is immaterial whether separate terminals of the Companies are physically merged or not, subject, however, to rules 2, 3, and or operation.

(2) If the transaction involved constitutes merely a purchase of permits or rights only by one carrier from another carrier, without the purchase or acquisition of equipment or terminals, the employees of the company selling the permits shall have the right to follow their jobs with dovetail seniority as provided herein.

(3) If the merger, purchase, acquisition, sale, etc. involves two Companies which do not have parallel operating rights then separate seniority lists will be maintained for the separate non-parallel operations. However, there will be one master seniority list for the purpose of fringe benefits, etc., and for the protection of employees laid off on one seniority board when work opportunities are available on the other seniority board and all eligible employees on such other seniority board are employed.

(4) Where the transaction involves both parallel and non-parallel rights then rule 1 above will apply to the parallel rights, and rule 3 will apply to non-parallel rights.

(5) Where only temporary authority is granted in connection with any of the transactions described above, then separate seniority lists shall continue only when terminals or operations are not merged, unless otherwise agreed. The Company which is to survive will assume the obligations of both collective bargaining agreements during the period of the temporary authority.

(6) If in connection with the transactions described in these rules the successor Company determines to discontinue the use of a Local Cartage Company, the employees of that Local Cartage Company who have worked exclusively on the pick-up and delivery service which is retained by the successor Company shall be given opportunity to continue to perform such service as an employee of such successor Company, and shall have their seniority "dovetailed" as described in the above rules.

(7) Area and/or State Committees created pursuant to Local Supplements which have previously established rules of seniority, not contrary to the provisions of such Supplements, and approved by the Joint Area Committee, may continue to apply such rules if such rules are reduced to writing.

(b) If the minimum wage, hour and working conditions in the company

absorbed differ from those minimums set forth in this Agreement and Supplements thereto, the higher of the two shall remain in effect for the men so absorbed.

Section 4. The Union reserves the right to cut the road seniority board when the average weekly earnings fall to $200.00 or less. This is not to be construed as imposing a limitation on earnings. After the Union notifies the Employer verbally to cut the board and the Employer refuses to do so, the Union shall immediately submit its request again in writing to the Employer. If the Employer still refuses to cut the board after receiving the written request, then his refusal to do so shall be considered a grievance to be handled in accordance with the grievance procedure set forth in this Agreement. After the Joint State Committee or the Joint Area Committee renders a decision favorable to the Union, if the Employer still refuses to cut the board then in such case the Union shall have the right to strike notwithstanding any provisions in this Agrement to the contrary, and the Employer shall be obligated to pay all employees under this Agreement for all time lost.

In determining whether average weekly earnings will fall to $200.00 or less, only the earnings of the lower twenty-five per cent (25%) of the drivers on the seniority board, counting from the bottom up, shall be considered. The average shall be calculated for the thirty (30) day period preceding the Union's original request. After such calculation is made, the average earnings of the drivers for the seniority board must also average the top seventy-five per cent (75%) of more than $200.00 per week, or layoff shall be made in accordance with seniority. The above provisions shall also apply to extra board for sleeper drivers exclusively.

Section 5.

New Branches, etc.

(a) Opening of new branches, terminals, divisions or operations.

(1) When a new branch, terminal, division or operation is opened (except as a replacement for existing operations or as a new division in a locality where there are existing operations), the Employer shall offer the opportunity to transfer to regular positions in the new branch, terminal, division, or operation in the order of their company or classification seniority, to employees in those branches, terminals, divisions or operations which are affected in whole or in part by the opening of the new branch, terminal, division or operation.

This provision is not intended to cover situations where there is replacement of an existing operation or where a new division is opened in a locality where there is an existing terminal. In these latter situations, laid-off or extra employees in the existing facilities shall have first opportunity for employment at the new operation in accordance with their seniority. If all regular full-time positions are not filled in this manner, then the provisions of the above paragraph shall apply.

(2) Any employee redomiciled by an approved change of operations or voluntary transfer to another point shall upon reporting to his new domicile be deemed to have relinquished his right to return, with seniority, to the domicile from which he was transferred, except under another approved change of operations. Employees who avail themselves of the transfer privileges because they are on layoff at their original terminal may exercise their seniority rights if work becomes available at the original terminal during the three year layoff period allowed them at their original terminal.

Closing of Branches, etc.

(b) Closing of branches, terminals, divisions or operations.

(1) When a branch, terminal, division or operation is closed and the work of the branch, terminal, division or operation is eliminated, an employee who was formerly employed at another branch, terminal, division or operation shall have the right to transfer back to such former branch, terminal, division or operation and exercise his seniority based on the date of hire at the branch, terminal, division or operation into which he is transferring provided he has not been away from such

original terminal for more than three years.

(2) When a branch, terminal, division or operation is closed or partially closed and the work of the branch, terminal, division or operation is transferred to another branch, terminal, division or operation in whole or in part, employees at the closed or partially closed down branch, terminal, division or operation shall have the right to transfer to the branch, terminal, division or operation into which the work was transferred prior to the recall of laid off employees at that location. Such employees transferring as a result of an approved change of operations, shall be dovetailed with their full classification seniority (city or road) into the active seniority roster at the point of redomicile, excluding those employees on letter of layoff. If and when additional employees are required at the point of redomicile, employees on layoff status at that location shall be recalled. When recalled, such laid off employees shall be dovetailed with their full seniority.

(c) When a branch, terminal, division or operation is closed and the work of the branch, terminal, division or operation is eliminated, employees who are laid off thereby shall be given first opportunity for available regular employment at any other branch, terminal, division or operation of the Employer within the Area of the Supplemental Agreement under which employed. The obligation to offer such employment shall continue for a period of three years from the date of closing. However, the Employer shall not be required to make more than one offer during this period. Any employee accepting such offer shall pay his own moving expenses. If hired, he shall go to the bottom of the seniority board but shall have company seniority for fringe benefits only.

Qualifications

(d) In all transfers referred to in Section 5(a), (b) and (c) above the employee must be qualified to perform the job by experience in the classification.

If a driver test is required, such test shall be given by a qualified driver-supervisor or driver.

Section 6. The Union shall be entitled to a seniority list each six months upon request. The Employer shall post a seniority list at least once every twelve (12) months. Employees shall make written complaint to the Company and Union within 30 days after such posting. Any such complaint not settled between the Company and Union shall be submitted to the grievance procedure.

Section 7. The parties acknowledge that the above rules are intended solely as general standards and further that many factual situations are presented to Committees which necessitate modification or amendment. Accordingly, the Employers and Unions acknowledge that questions of accrual, interpretation or application of seniority rights may arise which require different treatment and it is understood that the Employers and Unions jointly involved, and/or the respective grievance committees may mutually agree to such disposition of questions of seniority which in their judgment is appropriate under the circumstances. The Change of Operations Committee provided in the National Master Freight Agreement or the Supplemental Agreements shall have the authority to determine the establishment and application of seniority in those situations presented to them. In all cases the seniority decisions of the Joint Committees, including the Change of Operations Committees and Subcommittees, established by the National Master Freight Agreement and the respective Supplemental Agreements shall be final and binding.

ARTICLE 6.

Section 1. **Maintenance of Standards**

The Employer agrees that all conditions of employment in his individual operation relating to wages, hours of work, overtime differentials and general working conditions shall be maintained at not less than the highest standards in effect at the time of the signing of this Agreement, and the conditions of employment shall be improved whenever specific provisions for improvement are made elsewhere in this Agreement.

It is agreed that the provisions of this section shall not apply to inadvertent or bona fide errors made by the Employer or the Union in applying the terms and conditions of this Agreement if such error is corrected within ninety (90) days from the date of the error. If not corrected within ninety (90) days, such better condition shall remain in effect. However, a request for relief from such error may be filed in writing with the appropriate Conference Joint Area Committee, by a majority vote, shall determine whether and in what manner such better terms and/or conditions resulting from such error shall be continued or eliminated.

No other Employer shall be bound by the voluntary acts of another Employer when he may exceed the terms of this Agreement.

Any disagreement between the Local Union and the Employer with respect to this matter shall be subject to the grievance procedure.

This provision does not give the Employer the right to impose or continue wages, hours and working conditions less than those contained in this Agreement.

Section 2. **Extra Contract Agreements**

The Employer agrees not to enter into any agreement or contract with his employees, individually or collectively, which in any way conflicts with the terms and provisions of this Agreement. Any such agreement shall be null and void.

Section 3. **Work Week Reduction**

It is understood and agreed that should it subsequently be determined that any employees come under the provisions of the Fair Labor Standards Act or any similar legislation, then as to such employees, any provisions of this Agreement that do not comply with the requirements of said statutes are to be ged so that there is no violation of the statutes. If such changes result in substantial penalties to either the employees or the Company, a written notice shall be sent by either party requesting negotiations to change such provision or provisions as are affected. Thereafter the Union and the Company shall enter into immediate negotiations for the purpose of arriving at a mutually satisfactory solution. In the event the parties cannot agree on a solution to any problems arising from this section within 60 days after receipt of the stated written notice, either party shall be allowed economic recourse.

Section 4. New Equipment

Where new types of equipment and/or operations for which rates of pay are not established by this Agreement are put into use after July 1, 1973, within operations covered by this Agreement, rates governing such operations shall be subject to negotiations between the parties.

In the event agreement cannot be reached within sixty (60) days after date such equipment is put into use, the matter may be submitted to the National Grievance Committee for final disposition. Rates agreed upon or awarded shall be effective as of the date equipment is put into use.

ARTICLE 7.

Local and Area Grievance Machinery

Provisions relating to Local, State and Area Grievance Machinery are set forth in the applicable Supplements to this Agreement.

The procedure set forth in the Local, State and Area grievance machinery and in the National Grievance procedure may be invoked only by the authorized Union representative or the Employer. Authorized representatives of the Union may file grievances alleging violation of the Agreement, under local grievance procedure, or as provided herein. Time limitations regarding the filing of grievances, if not set forth in the respective Supplemental Agreements, must appear in the Rules of Procedure of the various grievance committees and shall apply equally to Employers and employees.

ARTICLE 8.

National Grievance Procedure

Section 1.

All grievances or questions of interpretations arising under this Master Agreement or Supplemental Agreements thereto shall be processed as set forth below. If such Supplemental Agreements provide for arbitration of discharges, such procedure shall be continued.

(a) All factual grievances or questions of interpretation arising under the provisions of the Supplemental Agreement, (or factual grievances arising under the National Master Agreement) shall be processed in accordance with the grievance procedure of the applicable Supplemental Agreement.

If upon the completion of the grievance procedure of the Supplemental Agreement the matter is deadlocked, the case shall be immediately forwarded to both the Employer and Union Secretaries of the National Grievance Committee, together with

all pertinent files, evidence, records and committee transcripts.

Any request for interpretation of the National Master Agreement shall be submitted directly to the Conference Joint Area Committee for the making of a record on the matter, after which it shall be immediately referred to the National Grievance Committee. Such request shall be filed with both the Union and Employer Secretaries of the National Grievance Committee with a complete statement of the matter.

(b) Any matter which has been referred pursuant to Section 1(a) above, or any question concerning the interpretation of the provisions contained in the Master Agreement, shall be submitted to a permanent National Grievance Committee which shall be composed of an equal number of Employer and Union representatives. The National Grievance Committee shall meet quarterly, for the disposition of grievances referred to it, or may meet at more frequent intervals, upon call of the Chairman of either the Employer or Union representatives on the National Grievance Committee. The National Grievance Committee shall adopt rules of procedure which may include the reference of disputed matters to subcommittees for investigation and report, with the final decision or approval, however, to be made by the National Grievance Committee. If the National Grievance Committee resolves the dispute by a majority vote of those present

and voting, such decision shall be final and binding upon all parties.

If the National Grievance Committee is deadlocked on the disposition of the dispute then either party shall be entitled to all lawful economic recourse to support its position in the matter. In considering factual disputes that are deadlocked or deadlocked questions of interpretation arising out of Supplemental Agreements, the decision of the National Grievance Committee shall be based solely on the provisions of the applicable Supplemental Agreement.

Section 2. Work Stoppages

(a) It is mutually agreed that the Local Union will, within two weeks of the date of the signing of this Agreement, serve upon the Employer a written notice listing the Union's authorized representatives who will deal with the Employer, make commitments for the Local Union generally and, in particular, those individuals having the sole authority to act for the Local Union in calling or instituting strikes or any stoppages of work which are not in violation of this Agreement. The Local Union may from time to time amend its listing of authorized representatives by certified mail. It is further agreed that in all cases of an unauthorized strike, slowdown, walkout, or any unauthorized cessation of work in violation of this Agreement the Local Union shall not be liable for damages resulting from such unauthorized acts of its members.

In the event of a work stoppage, slowdown, walkout, or cessation of work in violation of this Agreement, the Employer shall immediately send a wire to the appropriate Area Conference to determine if such strike, etc. is authorized. No strike, slowdown, walkout or cessation of work in violation of this Agreement shall be deemed to be authorized unless notification thereof by telegram has been received by the Employer and Local Union from such Area Conference. If no response is received by the Employer within twenty-four (24) hours after request, excluding Saturday, Sunday and holidays, such strike, etc. in violation of this Agreement shall be deemed to be unauthorized by the Area Conference for the purposes of this Agreement.

In the event of an unauthorized work stoppage or picket line etc., in violation of this Agreement, the Local Union shall immediately make every effort to persuade the employees to commence the full performance of their duties and shall immediately inform the employees that the work stoppage and/or picket line is unauthorized and in violation of this Agreement. The question of whether employees who refuse to work during such unauthorized work stoppages, in violation of this Agreement, or who fail to cross unauthorized picket lines at their Employer's premises shall be considered as participating in an unauthorized work stoppage in violation of this Agreement, may be submitted to the grievance procedure, but not the amount of suspensions herein referred to.

It is specifically understood and agreed that the Employer, during the first twenty-four (24) hour period of such unauthorized work stoppage in violation of this Agreement, shall have the sole and complete right of reasonable discipline, including suspension from employment, up to and including thirty (30) days, but short of discharge, and such employees shall not be entitled to or have any recourse to the grievance procedure. In addition, it is agreed between the parties that if any employee repeats any such unauthorized strike, etc., in violation of this Agreement, during the term of this Agreement, the Employer shall have the right to further discipline or discharge such employee without recourse for such repetition. After the first twenty-four (24) hour period of an unauthorized stoppage in violation of this Agreement, and if such stoppage continues, the Employer shall have the sole and complete right to immediately further discipline or discharge any employee participating in any unauthorized strike, slowdown, walkout, or any other cessation of work in violation of this Agreement, and such employees shall not be entitled to or have any recourse to the grievance procedure. The suspension or discharge herein referred to shall be uniformly applied to all employees participating in such unauthorized activity. The Employer shall have the sole right to schedule the employees' period of suspension.

The International Brotherhood of Teamsters, Teamsters National Freight Industry Negotiating Committee, Area Conferences, Joint Councils and Local Unions shall make immediate efforts to terminate any strike or stoppage of work as aforesaid which is not authorized by such organizations, without assuming liability therefor. For and in consideration of the agreement of the International Brotherhood of Teamsters, Teamsters National Freight Industry Negotiating Committee, Area Conferences, and Joint Councils affiliated with the International Brotherhood of Teamsters to make the aforesaid efforts including the use of all reasonable means at their disposal to require Local Unions and their members to comply with the law or the provisions of this Agreement, including the provisions limiting strikes, work stoppages, as aforesaid, the Associations and Employers who are parties hereto agree that they will not hold the International Brotherhood of Teamsters, Teamsters National Freight Industry Negotiating Committee, Area Conferences, or Joint Councils liable or sue them in any court or before any administrative tribunal for undertaking such efforts to terminate unauthorized strikes or stoppages of work as aforesaid or for undertaking such efforts to require Local Unions and their members to comply with the law or the provisions of this Agreement. It is further agreed that signator associations and Employers will not hold the International Brotherhood of Teamsters, Teamsters National Freight Industry Negotiating Committee, Area Conferences or Joint Councils liable or sue them in any court or before any administrative tribunal for such unauthorized work stoppages alleging condonation, ratification or assumption of liability for undertaking such efforts to terminate strikes or stoppages of work or requiring Local Unions and their members to comply with the law or the provisions of this Agreement.

The provisions of this Article shall continue to apply during that period of time between the expiration of this Agreement and the conclusion of the negotiations or the effective date of the successor Agreement, whichever occurs later. It is understood and agreed that failure by the International Brotherhood of Teamsters, Teamsters National Freight Industry Negotiating Committee, Area Conferences and/or the Joint Councils to authorize a strike by a Local Union shall not relieve such Local Union of liability for a strike authorized by it and which is in violation of this Agreement.

(b) The question of whether the International Union, Teamsters National Freight Industry Negotiating Committee, an Area Conference, Joint Council or Local Union have met their obligation set forth in the immediately preceding paragraph or the question of whether the International Union, Teamsters National Freight Industry Negotiating Committee, an Area Conference, Joint Council or the Local Union, separately or jointly, participated in an unauthorized work stoppage, slowdown, walkout or cessation of work in violation of the Agreement by calling, encouraging, assisting or aiding in such stoppage, etc., in violation of this Agreement, or whether an Employer engaged in a lockout in violation of this Agreement shall be submitted to the grievance procedure at the national level, prior to the institution of any damage suit action. When requested, the Co-Chairmen of the National Grievance Committee shall immediately appoint a subcommittee to develop a record by collecting evidence and hear testimony, if any, on the sole question of whether the International Union, Teamsters National Freight Industry Negotiating Committee, an Area Conference, Joint Council or Local Unions have met their obligation as aforesaid or of Union participation or Employer lockout in violation of this Agreement. The record shall be immediately forwarded to the National Grievance Committee for decision. If a decision is not rendered within thirty (30) days after the Co-Chairmen have convened the National Committee, the matter shall be considered deadlocked.

A majority decision of the National Grievance Committee on the questions presented as aforesaid shall be final and binding on all parties. If such majority decision is rendered in favor of one or more of the Union entities, or the Employer, in the case of lockout, no damage suit proceedings on the issues set forth in this Article shall be instituted against such Union entity or such Employer. If, however, the National Grievance Committee is deadlocked on the issues referred to in this subsection 2 (b), either party may institute damage suit proceedings, but the record of the National Grievance Committee and its Subcommittees shall not be offered in evidence by either party for any purpose. Except as provided in this subsection 2 (b), agreement to utilize this procedure shall not thereafter in any way limit or constitute a waiver of the right of the Employer or Union to commence damage suit action. However, the use of evidence in this procedure shall not waive the right of the Employer or Union to use such evidence in any litigation relating to the strike or lockout, etc., in violation of this Agreement. There shall not be any strike, slowdown, walkout, cessation of work or lockout as a result of a deadlock of the National Grievance Committee on the questions referred to under this subsection 2 (b), and any such activity shall be considered a violation of this Agreement.

Nothing herein shall prevent the Employer or Union from securing remedies granted by law except as specifically set forth in this subsection 2 (b).

Section 3. The National Grievance Committee by majority vote may consider and review all questions of interpretation which may arise under the provisions contained in the Master Agreement which are submitted by either the Union Area Director or the designated Employer representative; and shall have the authority to reverse and set aside the majority interpretation of any area, regional, or local grievance committee if, in its opinion, such interpretation is contrary to the provisions set forth in the Master Agreement, in which case the decision of the National Grievance Committee shall be final and binding.

Section 4. Any provisions in the grievance procedure of any Supplement hereto which would require deadlocked disputes to be determined by any arbitration process shall be null and void as to any grievances involving interpretation of the Supplemental Agreement or this National Master Agreement. The decision of the National Grievance Committee as to whether a grievance involves an interpretation which is subject to this procedure shall be final and conclusive.

Section 5. In the event of strikes, work stoppages, or other activities which are permitted in case of deadlock, default or failure to comply with majority decisions under this Agreement or any Supplement

thereto, no interpretation of this Agreement or any Supplement thereto by any tribunal shall be binding upon the Union or affect the legality or lawfulness of the strikes unless the Union stipulates to be bound by such interpretation, it being the intention of the parties to resolve all questions of interpretation by mutual agreement.

Section 6.

Change of Operations

Present terminals, breaking points or domiciles shall not be transferred or changed without the approval of an appropriate change of operations committee. Such committee shall be appointed in each of the Conference Areas, equally composed of employer and union representatives. The change of operations committee shall have the authority to determine the seniority of the employees affected and such determination shall be final and binding.

The change of operations committee shall also have jurisdiction for a period of twelve (12) months following the opening of a new terminal to consider the redomicile of employees who are laid off as a direct result of such opening of terminal.

This committee shall also have jurisdiction over the closing of terminals in regard to seniority. This shall not apply within a 25-mile radius. In considering any change of operations, this committee shall have the power to extend the three (3) year layoff period contained in Article 5, Section 1, or in applicable Supplemental Agreements, in the event it appears toward the end of such period that the circumstances warrant.

The Committee shall observe the employer's right to designate home domiciles and the operational requirements of the business. However, individual employees shall not be redomiciled more than once during the term of the contract as a result of an approved change of operations unless a merger, purchase, sale, acquisition, or consolidation of employers is involved, or unless the change of operations committee rules to the contrary based on the facts presented.

The National Grievance Committee shall adopt Rules of Procedure concerning the application and administration of this Article.

The Employer shall notify all affected Local Unions of the proposed Change of Operations at least twenty (20) calendar days prior to the hearing at the Joint Area Conference Committee and the Employer and the Local Unions affected shall have a mutual responsibility to inform the affected employees prior to such hearing in accordance with the practice and procedures agreed to in the respective area committees. Any exception or waiver of the aforesaid twenty (20) day period shall be mutually agreed to between the Employer and the Local Unions affected and approved by the Conference Area Change of Operations Committee.

Where an employee is required, through no fault of his own, to change domicile in order to follow employment as a result of an approved Change of Operations the Employer shall move the employee and assume the responsibility for proven loss of or damage to household goods due to such move including insurance against loss or damage. Should any employee possess household items of unusual or extraordinary value which will be included in the move such items shall be declared and an appraised value determined prior to the move. The Employer shall provide packing materials for the employee's household goods when requested or at the employee's request pay all costs and expenses of moving such household goods, including packing. This shall not apply to moves within a 50 miles radius.

The Employer shall pay reasonable expenses to demount and remount an employee's mobile home, if used as his residence and in such instance shall pay normal expenses to move such mobile home, including the use of other modes of transportation where required by law.

The Employer shall provide lodging for the employee at the point of redomicile, not to exceed thirty (30) calendar days, and in addition, shall reimburse the employee 10¢ per mile to transport one personal automobile to the new location.

The Employer shall not be responsible for moving expenses if the employee changes his residence as a result of voluntary transfer.

Section 7. All local, area, and national grievance committees as constituted under this agreement shall have the jurisdiction and power to decide grievances which arose under the preceding agreements and supplements thereto, applying, however; the contract under which the grievance arose.

ARTICLE 9.

Protection of Rights

Section 1.

Picket Lines

It shall not be a violation of this Agreement, and it shall not be cause for discharge or disciplinary action in the event an employee refuses to enter upon any property involved in a primary labor dispute, or refuses to go through or work behind any primary picket line, including the primary picket line of Unions party to this Agreement, and including primary picket lines at the Employer's places of business.

Section 2.

Struck Goods

It shall not be a violation of this Agreement and it shall not be cause for discharge or disciplinary action if any employee refuses to perform any service which his Employer undertakes to perform as an ally of an Employer or person whose employees are on strike, and which service, but for such strikes, would be performed by the employees of the Employer or person on strike.

Section 3. Subject to Article 32 hereof (Subcontracting), the Employer agrees that it will not cease or refrain from handling, using, transporting, or otherwise dealing in any of the products of any other employer or cease doing business with any other person, or fail in any obligation imposed by the Motor Carriers' Act or other applicable law, as a result of individual employees exercising their rights under this Agreement or under law, but the Employer shall notwithstanding any other provision in this Agreement, when necessary, continue doing such business by other employees.

Section 4. The layover provisions of the applicable Supplemental Agreement shall apply when the employer knowingly dispatches a road driver to a terminal at which a primary picket line has been posted as a result of the exhaustion of the grievance procedure, or after proper notification of a picket line permitted by the collective bargaining agreement, or economic strikes occurring after the expiration of collective bargaining agreements or to achieve a collective bargaining agreement. In such event and upon his request a driver shall be provided first class public transportation to his home terminal, plus be paid a minimum of eight (8) hours or actual time spent while returning, whichever is greater. The Employer shall determine the mode of transportation to be utilized.

Section 5.

Grievances

Within five (5) working days of filing of grievance claiming violation of this Article, the grievance shall be submitted directly to the National Grievance Committee without taking any intermediate steps, any other provisions of this Agreement to the contrary notwithstanding.

ARTICLE 10.

Loss or Damage

Section 1.

Employees shall not be charged for loss or damage unless clear proof of gross negligence is shown. This Article is not to be construed as permitting charges for loss or damage to equipment under any circumstances.

Section 2. The Union and Employers jointly recognize that the loss and theft of freight, equipment, materials and supplies, in whatever manner, pose a threat to the well being of the employees including loss of employment, and to the trucking industry. As a result, it is hereby agreed to create a national committee comprised of four union and four employer members for the purpose of investigating these subjects and to make recommendations to the National Negotiating Committee for appropriate remedial action.

In addition, a committee shall be appointed in each of the Conference areas comprised of four members, two from industry and two from the Union. The Conference Committee is to consult with and cooperate with the Employers or Unions on the subjects set forth herein.

ARTICLE 11.

Bonds

Should the Employer require any employee to give bond, cash bond shall not be compulsory, and any premium involved shall be paid by the Employer.

The primary obligation to procure the bonds shall be on the Employer. If the Employer cannot arrange for a bond within ninety (90) days, he must so notify the employee in writing. Failure to so notify shall relieve the employee of the bonding requirement. If proper notice is given, the employee shall be allowed thirty (30) days from the date of such notice to make his own bonding requirements, standard premiums only on said bond to be paid by the Employer. A standard premium shall be that premium paid by the Employer for bonds applicable to all other of its employees in

similar classifications. Any excess premium is to be paid by the employee. Cancellation of a bond after once issued shall not be cause for discharge unless the bond is cancelled for cause which occurs during working hours, or due to the employee having given a fraudulent statement in obtaining said bond.

ARTICLE 12.

Uniforms

The Employer agrees that if any employee is required to wear any kind of uniform as a condition of his continued employment, such uniform shall be furnished and maintained by the Employer, free of charge, at the standard required by the Employer.

The Employer shall replace all clothing, glasses, hearing aids and/or dentures not covered by company insurance or workmen's compensation which are destroyed or damaged in a wreck or fire with company equipment.

The Employer has the right to establish and maintain reasonable standards for wearing apparel and personal grooming.

ARTICLE 13.

Passengers

No driver shall allow anyone, other than employees of the Employer, who are on duty, to ride on his truck except by written authorization of the Employer, except in cases of emergency arising out of disabled commercial equipment or an Act of God. No more than two (2) people shall ride in the cab of a tractor unless required by government agencies or

the necessity of checking of equipment. This shall not prohibit drivers from picking up other drivers, helpers or others in wrecked or broken down motor equipment and transporting them to the first available point of communication, repair, lodging or available medical attention. Nor shall this prohibit the transportation of other drivers from the driver's own company at a delivery point or terminal to a restaurant for meals.

ARTICLE 14.

Compensation Claims

The Employer agrees to cooperate toward the prompt disposition of employee on-the-job injury claims. The Employer shall provide Workmen's Compensation protection for all employees even though not required by state law or the equivalent thereof if the injury arose out of or in the course of employment.

An employee who is injured on the job, and is sent home, or to a hospital, or who must obtain medical attention, shall receive pay at the applicable hourly rate for the balance of his regular shift on that day. An employee who has returned to his regular duties after sustaining a compensable injury who is required by the workmen's compensation doctor to receive additional medical treatment during his regularly scheduled working hours shall receive his regular hourly rate of pay for such time.

In the event that an employee sustains an occupational illness or injury while on a run away from his home terminal the Employer shall provide transportation by bus, train, plane, or automobile

to his home terminal if and when directed by a doctor.

The Employer agrees to provide any employee injured locally, transportation at the time of injury, from the job to the medical facility and return to the job, or to his home if required.

In the event of a fatality, arising in the course of employment, while away from the home terminal, the Employer shall return the deceased to his home at the point of domicile.

ARTICLE 15.

Military Clause

Employees enlisting or entering the military or naval service of the United States, pursuant to the provisions of the Military Selective Service Act of 1967, as amended, shall be granted all rights and privileges provided by the Act.

The Employer shall pay the Health and Welfare and Pension Fund contributions on employees on leave of absence for training in the military reserves or National Guard, but not to exceed fourteen (14) days, providing such absence effects his credits or coverage for Health and Welfare and/or Pensions.

ARTICLE 16.

Equipment, Accidents, Reports

The Employer shall not require employees to take out on the streets or highways any vehicle that is not in safe operating condition or equipped with the safety appliances prescribed by law. It shall not be a violation of this Agreement where employees refuse to operate unless such refusal is adjusted. All equipment which is refused because not mechanically sound or properly equipped, shall be appropriately tagged so that it cannot be used by other drivers until the maintenance department has adjusted the complaint. After equipment is repaired, the Employer shall place on such equipment an "OK" in a conspicuous place so the driver can see the same.

Under no circumstances will an employee be required or assigned to engage in any activity involving dangerous conditions of work or danger to person or property or in violation of [illegible] applicable statute or court orde[illegible] violation of a government regulation relating to safety of pers[illegible] or [illegible]ment. The term "dangero[illegible] of work" does not relate [illegible]argo which is hauled or ha[illegible]

Any employee invol[illegible]dent shall immediately rep[illegible]cident and any physical injury s[illegible]. When required by his Employer, the employee, before starting his next shift, shall make out an accident report in writing on forms furnished by the Employer and shall turn in all available names and addresses of witnesses to the accident. The employee shall receive a copy of the accident report that he submits to his Employer. Failure to comply with this provision shall subject such employee to disciplinary action by the Employer.

Employees shall immediately, or at the end of their shift, report all defects of equipment. Such reports shall be made on a suitable form furnished by the Em-

ployer and shall be made in multiple copies, one copy to be retained by the employee. The Employer shall not ask or require any employee to take out equipment that has been reported by any other employee as being in an unsafe operating condition until same has been approved as being safe by the mechanical department.

When the occasion arises where an employee gives written report on forms in use by the Employer of a vehicle being in an unsafe working or operating condition, and receives no consideration from the Employer, he shall take the matter up with the officers of the Union who will take the matter up with the Employer.

If the Employer requests a regular employee to qualify on equipment requiring a special license or in the event an employee is required to qualify (recognizing seniority) on such equipment in order to obtain a better job opportunity, with his Employer, the Employer shall allow such regular employee the use of the equipment in order to take the examination.

All equipment used as City Peddle trucks and equipment regularly assigned to peddle runs must have steps or other similar device to enable drivers to get in and out of the body.

The Employer shall install heaters and defrosters on all trucks and tractors.

The Employer and the Union together shall create a joint committee of qualified representatives for the purpose of consulting among themselves and with appropriate Government agencies, state

and federal, on matters involving highway and equipment safety.

There shall be first line tires on steering axle of road units.

All new road equipment regularly assigned to the fleet after July 1, 1973 shall be equipped with air-ride seats on the driver's side.

ARTICLE 17.

Pay Period

The Joint Area Committee or the National Grievance Committee and the Employer may by mutual agreement waive the provisions of Local Supplements dealing with pay periods upon a satisfactory showing of necessity by the Employer.

ARTICLE 18.

Other Services

In the event an Employer party to this Agreement may require the services of employees coming under the jurisdiction of this Agreement in a manner and under conditions not provided for in this Agreement, then and in such instances the Local Union and the Employer concerned may negotiate such matters for such specific purposes, subject to the approval of the Joint Area Committee.

ARTICLE 19.

Posting ·

Section 1.

Posting of Agreement

A copy of this Agreement shall be posted in a conspicuous place in each garage and terminal.

Section 2.

Union Bulletin Boards

The Employer agrees to provide suitable space for the Union bulletin board in each garage, terminal or place of work. Postings by the Union on such boards are to be confined to official business of the Union.

ARTICLE 20.

Union and Employer Cooperation

The Union, its members and the Employer agree at all times as fully as it may be within their power to further their mutual interest and interests of the Trucking industry and the International Brotherhood of Teamsters nationwide.

The Union and the Employer recognize the principle of a fair day's work for a fair day's pay; that jobs and job security of employees working under this Agreement are best protected through efficient and productive operations of the employer and the Trucking industry. The Employer may establish reasonable work standards which shall take into account all factors relating to the work assignment, run, terminal and territorial operational conditions, subject to agreement and approval with the Local Union, and to be filed for approval with the Conference Joint Area Committee.

The Union and Trucking industry agree to establish a Committee on Industry Operations composed of equal numbers of members from the industry and each Union conference area. The purposes of the Committee are to identify problems causing loss of business and jobs, for any reasons; to direct communication so as to educate employees relative to long-term job security through the employer,

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the Local Unions signatory to this agreement, or other means. It is to be recognized as a joint Union and Employer effort, and shall have the full support of the International Union and the industry. Such Committee shall investigate and make recommendations to the National Grievance Committee on a quarterly basis designed to eliminate operational inefficiencies.

In addition, the Committee on Industry Operations shall advise the Joint National Negotiating Committees of specific recommendations to achieve operational efficiencies as well as steady growth in the Motor Carrier Industry in writing six (6) months prior to the expiration of the current Agreement.

The purpose of this statement of principle is to protect the long-range interests of the employees, the Company, the Union and the general public served.

ARTICLE 21.

Union Activities Any employee member of the Union acting in any official capacity whatsoever shall not be discriminated against for his acts as such officer of the Union so long as such acts do not interfere with the conduct of the Employer's business, nor shall there be any discrimination against any employee because of union membership or activities.

ARTICLE 22.

Owner-Operators Owner-operators (See Note), other than certificated or permitted carriers, shall not be covered by this Agreement unless

Section 1. affiliated by lease with a certificated or permitted carrier which is required to operate in full compliance with all the provisions of this Agreement and holding proper ICC and state certificates and permits. Such owner-operators shall operate exclusively in such service and for no other interests.

(NOTE: Whenever "owner-operator" is used in this Article, it means owner-driver only, and nothing in this Article shall apply to any equipment leased except where owner is also employed as a driver.)

Section 2. This type of operator's compensation for wages and working conditions shall be in full accordance with all the provisions of this Agreement. The owner-operator shall have seniority as a driver only.

Section 3. Certificate and title to the equipment must be in the name of the actual owner.

Section 4. In all cases, hired or leased equipment shall be operated by an employee of the certificated or permitted carrier. The performance of unit work by owner-operators shall be governed by the provisions of this Agreement and Supplements relating to owner-operators. The employer expressly reserves the right to control the manner, means and details of, and by which, the owner-operator performs his services, as well as the ends to be accomplished.

Section 5. Certificated or permitted carriers shall use their own available equipment, together with all leased equipment under minimum thirty-day (30) bona fide lease

arrangements, on a rotating board, before hiring any extra equipment.

Section 6. Separate checks shall be issued by the certificated or permitted carriers for driver's wages and equipment rental. At no time shall the equipment check be for less than actual miles operated. Separate checks for drivers shall not be deducted from the minimum truck rental revenue. The driver shall turn in time direct to the certificated or permitted carrier. All monies due the owner-operator may be held no longer than two weeks, except where the lease of equipment agreement is terminated and in such case all monies due the operator may be held no longer than thirty (30) days from the date of the termination of the operation of the equipment.

Section 7. Payment for equipment service shall be handled by the issuance of a check for the full mileage operated, tonnage or percentage, less any agreed advances. A statement of any charges by the certificated or permitted carrier shall be issued at the same time, but shall not be deducted in advance.

Section 8. The owner-operator shall have complete freedom to purchase gasoline, oil, grease, tires, tubes, etc., including repair work, at any place where efficient service and satisfactory products can be obtained at the most favorable prices.

Section 9. There shall be no deduction pertaining to equipment operation for any reason whatsoever.

Section 10. The Employer or certificated or permitted carrier hereby agrees to pay road or mile tax, social security tax, compensation insurance, public liability and property damage insurance, bridge tolls, fees for certificates, permits and travel orders, fines and penalties for inadequate certificates, license fees, weight tax and wheel tax, and for loss of driving time due to waiting at state lines, and also cargo insurance. It is expressly understood that the owner-driver shall pay the license fees in the state in which title is registered. All tolls, no matter how computed, must be paid by the Employer regardless of any agreement to the contrary.

All taxes or additional charges imposed by law relating to actual truck operation and use of highways, no matter how computed or named, shall be paid by the Carrier, excepting only vehicle licensing as such, in the state where title is registered.

Section 11. There shall be no interest or handling charge on earned money advanced prior to the regular pay day.

Section 12. (a) All certificated or permitted carriers hiring or leasing equipment owned and driven by the owner-operator shall file a true copy of the lease agreement covering the owner-driven equipment with the Joint Area Committees. The terms of the lease shall cover only the equipment owned and driven by the owner-operator and shall be in complete accord with the minimum rates and conditions provided herein, plus the wage rate and supplementary allowances for drivers as embodied elsewhere in this Agreement.

(b) The minimum rates for leased equipment owned and driven by the owner-operator, the minimum guarantees for tractors and trailers, and other conditions are set forth in the Area Supplement attached hereto.

Section 13. Driver-owner mileage scale does not include use of equipment for pick-up or delivery at point of origin terminal or at point of destination terminal, but shall be subject to negotiations between the Local Union and Employer. Such negotiations shall be only for the purpose of protecting the wage rate of the driver only as an employee. Failure to agree shall be submitted to the grievance procedure.

Section 14. There shall be no reductions where the present basis of payment is higher than the minimums established herein for this type of operation. Where owner-operator is paid on a percentage or tonnage basis and the operating company reduces its tariff, the percentage or tonnage basis of payment shall be automatically adjusted so that the owner-operator suffers no reduction in equipment rental or wages, or both.

Section 15. It is further understood and agreed that any arrangements which have heretofore been entered into between members of this Union, either among themselves or with the Employer or with the aid of the Employer, applicable to owner-operator equipment contrary to the terms hereof, shall be dissolved or modified within thirty (30) days after the signing of this Agreement so that such arrangements shall apply only to equipment of the owner-operator while being driven by such owner-operator. In the event that the parties cannot agree on a method of dissolution or modification of such arrangement to make the same conform to this Agreement, the question of dissolution or modification shall be submitted to arbitration, each party to select one member of the arbitration board, and the two so selected to choose a third member of said board. If the two cannot agree upon the third within five (5) days, he shall be appointed by the Joint Area Committee. The decision of said board is to be final and binding.

Section 16. It is further agreed that the intent of this clause and this entire Agreement is to assure the payment of the Union scale of wages as provided in this Agreement and to prohibit the making and carrying out of any plan, scheme or device to circumvent or defeat the payment of wage scales provided in this Agrement. This clause is intended to prevent the continuation of or formation of combinations or corporations or so-called lease of fleet arrangements whereby the driver is required to and does periodically pay losses sustained by the corporation or fleet arrangement, or is required to accept less than the actual cost of the running of his equipment, thus, in fact, reducing his scale of pay.

Section 17. It is further agreed that if the Employer or certificated or permitted carrier requires that the owner-operator sell his equipment to the Employer or certificated or permitted carrier, directly or indirectly, the owner-operator shall be paid the fair true value of such equipment. Copies of the instruments of sale shall be filed with the Union and unless objected to within ten (10) days shall be deemed satisfactory. If any question is raised by the Union as to such value, the same shall be submitted to arbitration, as above set forth, for determination. The decision of the arbitration board shall be final and binding.

Section 18. It is further agreed that the Employer or certificated or permitted carrier will not devise or put into operation any scheme, whether herein enumerated or not, to defeat the terms of the Agreement, wherein the provisions as to compensation for services of and for use of equipment owned by owner-operator shall be lessened, nor shall any owner-operator lease be cancelled for the purpose of depriving employees of employment, and any such complaint that should arise pertaining to such cancellation of lease or violation under this section shall be subject to the discharge and grievance provisions of the Area Supplement.

Section 19. (a) The use of individual owner-operators shall be permitted by all certificated or permitted carriers who will agree to submit all grievances pertaining to owner-operators to joint Employer-Union grievance committees in each respective state. It is understood and agreed that all such grievances will be promptly heard and decided with the specific purpose in mind of:

(1) protecting provisions of the Union Agreement;

(2) prohibiting any and all violations directly or indirectly of Agreement provisions relating to the proper use of individual owners;

(3) prohibiting any attempts by any certificated or permitted carrier in changing his operations which will affect the rights of drivers under the terms of the Agreement, and generally the certificated or permitted carriers agree to assume responsibility in policing and doing everything within their power to eliminate all alleged abuses in the use of owner-operators which resulted in the insertion of Section 19 (Article 33) in the original 1945-47 Central States Over-the-Road agreement;

(4) owner-operator operations to be terminal to terminal, except where no local employees to make such deliveries or otherwise agreed to in this agreement;

(5) the certificated or permitted carriers agree that they will, with a joint meeting of the Unions, set up uniform rules and practices under which all such cases will be heard.

(6) it shall be considered a violation of this Agreement should any operator deduct from rental of equipment the increases provi-

ded for by the 1973 Amendments or put into effect any means of evasion to circumvent actual payment of increases agreed upon effective for the period starting July 1, 1973, and ending March 31, 1976.

(b) No owner-operator shall be permitted to drive or hold seniority where he owns three or more pieces of leased equipment. This provision shall not apply to present owner-operators having three or more pieces of equipment under lease agreement, but such owner-operator shall not be permitted to put additional equipment in service so long as he engages in work covered by this Agreement or holds seniority. Where such owner-operator drives, he can hold seniority where he works sixty (60) per cent or more of the time.

Section 20. All leases, agreements or arrangements between carriers and owner-operators shall contain the following statement: The equipment which is the subject of this lease shall be driven by an employee of the lessee at all times that it is in the service of the lessee. If the lessor is hired as an employee to drive such equipment he shall receive as rental compensation for the use of such equipment no less than the minimum rental rates, allowances, and conditions (or the equivalent thereof as approved by the Joint Area Committee), established by the then current appropriate Area Over-The-Road Motor Freight Supplemental Agreement, for this type of equipment, and, in addition thereto, the full wage rate and supplementary allowances for drivers (or the equivalent thereof as approved by the Joint Area Committee).

The lessee expressly reserves the right to control the manner, means and details of, and by which the driver of such leased equipment performs his services, as well as the ends to be accomplished.

To the extent that any provision of this lease may conflict with the provisions of such appropriate Area Over-The-Road Motor Freight Supplemental Agreement as it applies to equipment driven by the owner such provision of this lease shall be null and void and the provisions of such Agreement shall prevail.

ARTICLE 23.

Separation of Employment

Upon discharge the Employer shall pay all money due to the employee during the first payroll department working day. Failure to do so shall subject the Employer to pay liquidated damages in the amount of eight (8) hours pay for each day of delay. Upon quitting, the Employer shall pay all money due to the employee on the pay day in the week following such quitting.

ARTICLE 24.

Inspection Privileges

Authorized agents of the Union shall have access to the Employer's establishment during working hours for the purpose of adjusting disputes, investigating working conditions, collection of dues, and ascertaining that the Agreement is being adhered to, provided, however, there is no interruption of the firm's working schedule.

ARTICLE 25.

Separability and Savings Clause

If any Article or Section of this Agreement or of any Supplements or Riders thereto should be held invalid by operation of law or by any tribunal of competent jurisdiction, or if compliance with or enforcement of any Article or Section should be restrained by such tribunal pending a final determination as to its validity, the remainder of this Agreement and of any Supplements or Riders thereto, or the application of such Article or Section to persons or circumstances other than those as to which it has been held invalid or as to which compliance with or enforcement of has been restrained, shall not be affected thereby.

In the event that any Article or Section is held invalid or enforcement of or compliance with which has been restrained, as above set forth, the parties affected thereby shall enter into immediate collective bargaining negotiations after receipt of written notice of the desired amendments by either employer or union for the purpose of arriving at a mutually satisfactory replacement for such Article or Section during the period of invalidity or restraint. There shall be no limitation of time for such written notice. If the parties do not agree on a mutually satisfactory replacement within sixty (60) days after receipt of the stated written notice, either party shall be permitted all legal or economic recourse in support of its demands notwithstanding any provisions of this Agreement to the contrary.

ARTICLE 26.

Time Sheets and Time Clocks

In Over-the-Road or Line operations, the Employer shall provide and require the employee to keep a time sheet or trip card showing the arrival and departure at terminal and intermediate stops and cause and duration of all delays, time spent loading and unloading, and same shall be turned in at the end of each trip.

In Local Cartage operations a daily time record shall be maintained by the Employer at its place of business. All Employers who employ five (5) or more people at any terminal shall have time clocks at such terminals.

Employees shall punch their own time cards.

ARTICLE 27.

Emergency Reopening

In the event of war, declaration of emergency or imposition of economic controls during the life of this Agreement, either party may re-open the same upon sixty (60) days written notice and request renegotiation of matters dealing with wages and hours. There shall be no limitation of time for such written notice. Upon the failure of the parties to agree in such negotiations within sixty (60) days thereafter either party shall be permitted all lawful economic recourse to support its request for revisions. If Governmental approval of revisions should become necessary, all parties will cooper-

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ate to the utmost to attain such approval. The parties agree that the notice provided herein shall be accepted by all parties as compliance with the notice requirements of applicable law, so as to permit economic action at the expiration thereof.

ARTICLE 28.

Sympathetic Action

In the event of a labor dispute between any Employer, party to this Agreement, and any International Brotherhood of Teamsters' Union, parties to this or any other International Brotherhood of Teamsters' Agreement, during the course of which dispute such Union engages in lawful economic activities which are not in violation of this or such other Agreement, then any other affiliate of the International Brotherhood of Teamsters, having an Agreement with such Employer shall have the right to engage in lawful economic activity against such Employer in support of the above first-mentioned Union notwithstanding anything to the contrary in this Agreement or the International Brotherhood of Teamsters' Agreement between such employer and such other affiliate.

ARTICLE 29.

Section 1.

Piggy-Back, Barge, etc.

The Union reserves the right to re-open this agreement for the purpose of negotiations for employees engaged in operations which combine with or are part of other methods of transportation such as "piggy-back," barge, etc. If the parties are unable to agree upon such matters, the Union may engage in lawful economic recourse in support of its demands.

Section 2. On operations covered by this Agreement which combine with or are a part of other methods of transportation including leasers, full and complete records of handling, dispatch and movement of such units are to be kept by the Employer and such records are to be made available for inspection by the representatives of the Union in the locality affected by such operations. Trailers piggy-backed or hauled by leasers in combination with road operations are to be signed in and signed out on the regular dispatch sheet kept in road operations. These sheets will be made available, upon request, to the drivers for a period of ten (10) days. Where inspection of the records indicates that piggy-back is being used as a substitute for road operations rather than handling overflow traffic, the grievance procedure may be invoked to provide a reasonable remedy for any local union adversely affected by the improper usage of substituted service.

Section 3. This Article shall not apply to such operations as were in existence prior to December 31, 1955, but shall apply to any extension, addition, modification or any similar change (exclusive of increase in volume) in such prior operations.

Section 4. An Employer shall not use piggy-back, birdy-back, fishy-back or barge operations, etc. over the same route where he has established relay runs or through runs, except to move overflow freight. If a driver is available (which includes the one (1) hour period of time prior to end of his rest period) at point of origin when a trailer leaves the yard for the

piggy-back, birdy-back, fishy-back or barge operations ramp, such driver's run-around compensation shall start from the time the trailer leaves the yard. Available regular drivers at relay points shall be protected against run arounds if a violation occurred at point of origin.

ARTICLE 30.

Jurisdictional Disputes

In the event that any dispute should arise between any Local Unions, parties to this Agreement, Supplements or Riders thereto or between any local Union, party to this Agreement, Supplements or Riders thereto and any other Union, relating to jurisdiction over employees or operations covered by such Agreements, the Employer and the Local Unions agree to accept and comply with the decision or settlement of the Unions or Union bodies which have the authority to determine such dispute, and such disputes shall not be submitted to arbitration under this Agreement, Supplements or Riders thereto or to legal or administrative agency proceedings. Pending such determination, the Employer shall not be precluded from seeking appropriate legal or administrative relief against work stoppages or picketing in furtherance of such dispute.

ARTICLE 31.

Multi-Employer, Multi-Union Unit

The parties agree to become a part of the multi-employer, multi-union bargaining unit established by this National Master Agreement, and to be bound by the interpretations and enforcement of this National Master Agreement and Supplements thereto.

The parties further agree to participate in joint negotiations of any modification or renewal of this National Master Agreement and Supplements thereto and to remain a part of the multi-employer, multi-union bargaining unit set forth in such renewed Agreement and Supplements.

ARTICLE 32.

Subcontracting

Section 1.

For the purpose of preserving work and job opportunities for the employees covered by this Agreement, the Employer agrees that no work or services of the kind, nature or type covered by, presently performed, or hereafter assigned to the collective bargaining unit will be subcontracted, transferred, leased, assigned or conveyed in whole or in part to any other plant, person or nonunit employees, unless otherwise provided in this Agreement.

The Employer may subcontract work when all of his regular employees are working, except that in no event shall road work presently performed or runs established during the life of this Agreement be farmed out. No dock work shall be farmed out except for existing situations established by agreed to past practices. Overflow loads may be delivered by drivers other than the Employer's employees provided that this shall not be used as a subterfuge to violate the provisions of this Agreement. Loads may also be delivered by other agreed to methods or as presently agreed to.

The normal, orderly interlining of freight for peddle on occasional basis, where there are parallel rights, and when not for the purpose of evading this Agreement may be continued as has been permitted by past practice providing it is not being done to defeat the provisions of this contract.

The interlining of freight or a division of tariff, for any purpose, including local cartage, dock, hostling and delivery is included within the term subcontracting as used in this Article and may be continued as has been permitted by past practice providing it is not being done to defeat the provisions of this contract.

In the event that an employer signatory to this Agreement utilizes personnel on a regular basis which has been supplied by a labor contractor, as such to perform subcontracting work permitted by this Agreement, such personnel shall receive the wages, hours and general working conditions provided herein.

Section 2. Within five (5) working days of filing of grievance claiming violation of this Article, the parties to this Agreement shall proceed to the final step of the grievance procedure, without taking any intermediate steps, any other provision of this Agreement to the contrary notwithstanding.

ARTICLE 33.

Cost of Living

All employees covered by this Agreement shall be covered by the provisions of a cost-of-living allowance, as set forth in the section.

The amount of the cost-of-living allowance shall be determined and redetermined as provided below on the basis of the "Consumer Price Index for Urban Wage Earners and Clerical Workers (All Items) published by the Bureau of Labor Statistics, U.S. Department of Labor (1957-1959 = 100)" and referred to herein as the "Index."

The first cost-of-living allowance shall be effective the first pay period beginning on or after July 1, 1974, based on the difference between the Index figure of March, 1973, and the Index figure for February, 1974, and shall continue in effect until the first pay period beginning on and after July 1, 1975.

The second cost-of-living allowance shall be effective the first pay period beginning on and after July 1, 1975, based on the difference between the Index figure of March, 1974, and the Index figure for February, 1975, and shall continue in effect to and including March 31, 1976.

Adjustments in the cost-of-living allowance shall be made on the basis of changes in the Index as follows:

First Allowance:

Index Increase from March, 1973

There shall be a 1¢ per hour or .25 mill per mile adjustment for every .3 point increase in the Index.

For example:

	Allowance *Per Hour*	*Per Mile*
First .3 point	1¢	.25 mill
Second .3 point	2¢	.50 mill
Third .3 point	3¢	.75 mill
Fourth .3 point	4¢	1.00 mill
Fifth .3 point	5¢	1.25 mill
Sixth .3 point	6¢	1.50 mill
Seventh .3 point	7¢	1.75 mill
Eighth .3 point	8¢	2.00 mill

Second Allowance:

Index Increase from March, 1974

There shall be a 1¢ per hour or .25 mill per mile adjustment for every .3 point increase in the Index.

There shall be a maximum of 11¢ an hour (or 2.75 mills per mile) adjustment payable under each of the two allowances, but a minimum increase of 8¢ an hour (or 2.00 mills per mile) shall be guaranteed under each such allowance. In the event that the Bureau of Labor Statistics shall not issue the appropriate Index on or before the beginning of one of the pay periods referred to herein, any adjustment in the allowance required by such Index shall be effective at the beginning of the first pay period after receipt of such Index. No adjustments, retroactive or otherwise, shall be made in the amount of the cost-of-living allowance due to any revision which later may be made in the published figures for the Index for any month on the basis of which the allowance has been determined. The cost-of-living allowance shall not become a fixed part of the base rates for any classification.

A decline in the Index shall not result in a reduction of classification base rates.

Continuance of the cost-of-living allowance shall be contingent upon the continued availability of official monthly Bureau of Labor Statistics Price Index in its present form and calculated on the same basis as the Index for 1965 unless otherwise agreed upon by the parties.

Cost-of-living increases, if any, shall be applied to the hourly and mileage rates except where specifically provided otherwise in the Supplemental Agreements.

ARTICLE 34.

Moonlighting

The Employer shall not employ in any capacity any person who is otherwise regularly employed, provided however:

(1) This provision shall not apply where the Employer is presently using otherwise regularly employed persons who have acquired seniority and are receiving all other benefits of the agreement including fringe benefits. Such persons may be continued in employment.

(2) The Employer may hire persons who are otherwise regularly employed if other manpower is not available. Disagreement as to availability shall be subject to the grievance procedure. Such persons shall receive all benefits they are entitled to under the Agreement.

(3) In the event of layoff employees who have regular outside employment shall be first laid off regardless of such employee's seniority standing unless such employee immediately terminates such outside employment. In the event there are two or more employees having regular

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outside employment, the Employer shall lay off the employee having the latest date of hire.

Any employee so laid off shall, as a condition of recall, terminate other regular employment which he may have, unless qualified for recall under Item 2 above.

Any employee employed under a Local Cartage Agreement who works a total of forty (40) or more hours a week for one Employer covered by a Local Cartage or Road Agreement shall receive double time for all work in excess of forty (40) hours he works in workweek from the second Employer for whom such hours in excess of forty (40) is performed after the Employer is notified by the Local Union.

Employees hired prior to August, 1964, or the effective date of the 1964 contract, having two (2) regular (even if part-time) jobs (acquired before August, 1964) are protected insofar as their seniority under the Master Freight Agreement with the following exceptions:

(a) If there is a layoff and employees working exclusively for a trucking company having seniority status would be laid off if the man with the two regular or part-time jobs above continues to work, the individual above with two regular or part-time jobs would be laid off first unless he elected to give up his other outside job.

(b) If an employee with lesser seniority

is laid off at the same time as the individual having two regular or part-time jobs and electing to keep both jobs, and there is a recall for additional employees, the man having exclusive employment with the trucking company under the Master Agreement would be subject to recall first.

(c) The only time the man with two regular or part-time jobs would be subject to recall would be when all employees with seniority were returned to work and additional men are needed, subject to Section 2, of Article 34.

(d) This applies to regular or part-time employees on two jobs.

(e) This shall not prohibit local unions and employers from working out mutual problems for the benefit of parties concerned.

(f) Provisions of this Article shall not apply where a full-time employee with seniority in classification covered by this Agreement or Supplements works on a second job on his off-days or off-nights outside of the trucking industry.

ARTICLE 35.

Garnishments

In the event of notice to an Employer of a garnishment or impending garnishment the Employer may take disciplinary action if the employee fails to satisfy such garnishment within a seventy-two (72) hour period (limited to working days) after notice to the employee. However the Employer may not discharge any employee by reason of the fact that his earnings have been subject to garnishment for any one indebtedness. If the Employer is notified of three garnishments irrespective of whether satisfied by the employee within the seventy-two hour period, the employee may be subject to discipline, including discharge in extreme cases. However, if the Employer has an established practice of discipline or discharge with a fewer number of garnishments or impending garnishments if the employee fails to adjust the matter within the seventy-two (72) hour period, such past practice shall be applicable in those cases.

ARTICLE 36.

Section 1. Employee's Bail

Employees will be bailed out of jail if accused of any offense in connection with the faithful discharge of their duties, and any employee forced to spend time in jail or in courts shall be compensated at his regular rate of pay. In addition, he shall be entitled to reimbursement for his meals, transportation, court costs, etc. Provided, however, that faithful discharge of duties shall in no case include compliance with any order involving commission of a felony. In case an employee shall be subpoenaed as a Company witness he shall be reimbursed for all time lost and expenses incurred.

Section 2. Suspension or Revocation of License

In the event an employee shall suffer a suspension or revocation of his right to drive the Employer's equipment for any reason, he must notify his Employer in writing within a reasonable period of time. Failure to comply will subject the employee to disciplinary action up to and including discharge in accordance with the procedures set forth in the appropriate supplement. If such suspension or revocation comes as a result of his complying with his company's instruction, which results in a succession of size and weight penalties or because he complied with his Employer's instruction to drive Company equipment which is in violation of D.O.T. regulations relating to equipment or because the Company equipment did not have either a speedometer or a tachometer in proper working order and if the employee has notified the Employer of the citation for such violation as above-mentioned, the Employer shall provide employment to such employee at not less than his regular earnings at the time of such suspension for the entire period thereof.

ARTICLE 37.

Training Program

In recognition of the mutual Union and Industry continuing need for trained trucking industry personnel, and the joint responsibility to those seeking employment in the industry who lack adequate qualifying industry experience, a subcommittee of the National Negotiating Committee has been requested to draft an on-the-job training program for new employees, which program may be utilized by individual Employers.

Such Subcommittee shall consist of an equal number of Union and Employer Representatives. It is agreed by the parties hereto that said Subcommittee with the approval of the Local Unions involved shall also have the authority to make amendments to and revisions of the application of the National Master Freight Agreement and Supplemental Agreements with respect to wages, fringe benefits and seniority accrual for trainees as they deem necessary to accomplish any mutually agreed-to-training program.

ARTICLE 38.

Non-Discrimination The Employer and the Union agree not to discriminate against any individual with respect to his hiring, compensation, terms or conditions of employment because of such individual's race, color, religion, sex, or national origin, nor will they limit, segregate or classify employees in any way to deprive any individual employee of employment opportunities because of his race, color, religion, sex, or national origin.

ARTICLE 39.

Duration

Section 1. This Agreement shall be in full force and effect from July 1, 1973, to and including March 31, 1976, and shall continue from year to year thereafter unless written notice of desire to cancel or terminate the Agreement is served by either party upon the other at least sixty (60) days prior to date of expiration.

Section 2. Where no such cancellation or termination notice is served and the parties desire to continue said Agreement but also desire to negotiate changes or revisions in this Agreement, either party may

serve upon the other a notice at least sixty (60) days prior to March 31, 1976, or March 31st of any subsequent contract year, advising that such party desires to revise or change terms or conditions of such Agreement.

Section 3. Revisions agreed upon or ordered shall be effective as of April 1, 1976, or April 1st of any subsequent contract year. The respective parties shall be permitted all legal or economic recourse to support their requests for revisions if the parties fail to agree thereon.

Section 4. In the event of an inadvertent failure by either party to give the notice set forth in Sections 1 and 2 of this Article, such party may give such notice at any time prior to the termination or automatic renewal date of this Agreement. If a notice is given in accordance with the provisions of this Section, the expiration date of this Agreement shall be the sixty-first (61st) day following such notice.

IN WITNESS WHEREOF the parties hereto have set their hands and seals this 28th day of June, 1973, to be effective as of July 1, 1973, except as to those areas where it has been otherwise agreed between the parties.

MASTER

Local 807—Bohack 1973-1976 Collective Bargaining Agreement

NEGOTIATING COMMITTEE

FOR THE EMPLOYEES:
TEAMSTERS NATIONAL FREIGHT INDUSTRY NEGOTIATING COMMITTEE

Frank E. Fitzsimmons
(Chairman)

Murray W. Miller
Robert Holmes
Weldon L. Mathis
William J. McCarthy
George E. Mock
Einar O. Mohn
Joseph Morgan
Edward Nangle
William Presser
Salvatore Provenzano
Ray Schoessling

Joseph Trerotola
Arnie Weinmeister
Roy Williams
Walter J. Shea
Elvin E. Hughes
Robert T. Flynn
Walter W. Teague
Howard Jones
Verne Milton
Robert Rampy
Al Weiss

TRUCKING EMPLOYERS, INC.
C. G. Zwingle, Chairman

Arthur E. Imperatore
Vincent R. Dagen
E. W. Swan
Rudy Pulliam

Robert F. Todd
John A. Murphy
Charles J. Lawlor
R. S. McIlvennan

In behalf of the following associations:

Arizona Motor Truck League, Inc.

California Trucking Association

Carolina Transportation Association, Inc.

Carriers Council of New Hampshire, Inc.

Central Motor Freight Association, Inc.

Central Pensylvania Motor Carriers Conference, Inc.

Employers Council (of Maine)

Employers Group of Motor Freight Carriers, Inc.

Greater Newark Trucking Association

Indiana Motor Carriers Labor Relations Association, Inc.

Intermountain Operators League

Kentucky Motor Carriers Labor & Advisory Council, Inc.

Middlesex Motor Freight Carriers Association

Midwest Employers Labor Advisory Council, Inc. (Iowa and Minnesota)

Missouri-Kansas Motor Carriers Conference, Inc.

Motor Carriers Association of North Jersey

Motor Carriers Employers' Association (Michigan)

Motor Carriers of Virginia, Inc.

Motor Transport Labor Relations, Inc.

New England Motor Carriers Council, Inc.

New York State Employers' Association, Inc.

New York State Motor Truck Association, Inc.

Ohio Motor Carriers Labor Relations Association

Southeastern Area Motor Carriers Labor Relations Association

Southwest Operators Association

Tri-Area Labor Association

Tri-City Common Carriers Trucking Association

Truck Operators' League of Montana, Inc.

Truck Operators League of Oregon

Trucking Employers Labor Council of Maryland-District of Columbia

Washington Trucking Associations, Inc.

Western Empire Operators Association

Western Pennsylvania Motor Carriers Association, Inc.

Wisconsin Motor Carriers Labor Advisory Council

Other Associations and Employers:

Associated Industries of the Inland Empire
Ross E. Bray

California Labor Consultants
Clyde Yardell

MASTER

Cartage Employers' Management Association
Charles E. Hughes

Cascade Employers Association, Inc.
Pat Blair

Cedar Rapids Transfermens Association
W. B. Cass

Cleveland Draymen Association, Inc.
Joseph E. Gardner, President
Bernard S. Goldfarb, General Counsel

Highway Carriers Association of California
Seamon & Sparks

Hudson Valley Carriers Association
Jack Stewart

Industries Council
Phillip G. Johnson

Industrial Employers & Distributors Assn.

Irregular Route Carriers
Robert A. Sullivan

Kansas City Cartagemen's Association
Larry Belger

Labor Relations Association
Monte Perkins

Master Truckmen of America Association

Michigan Cartagemen Association
Paul Hare
Howard McDougall

Mountain States Employers Council, Inc.
Jack I. Moore

Motor Carriers Council of St. Louis
Mitchell P. Campbell, Manager

Motor Carrier Labor Advisory Council
Frank G. Bridge
John H. King
Warren S. Thompson

National Perishable Commodities Conference
Robert A. Sullivan

National Steel Carriers' Association
Ron Crittenton

Nebraska Small Carriers Group
Robert K. Anderson

New England Short Haul Carriers Assn.
Paul J. Kingston

Northern Ohio Motor Truck Association, Inc.
James F. Nolan, President
Bernard S. Goldfarb, General Counsel

Perishable Commodities Association

Sacramento Valley Employers Council
Richard J. Jacinto

Steel Truckers Employer Association
George S. Maxwell

United Employers, Inc.
Stanley W. Skoog

IN WITNESS WHEREOF the undersigned duly execute The National Master Agreement and Supplemental Agreement (and Riders, if any) set forth herein.

———— FOR THE UNION ————

LOCAL UNION No..............., affiliate of I. B. of T., C., W. & H., of A.

By ....
(Signed)

Its ....
(Title)

———— FOR THE COMPANY ————

....
(Company)

By ....
(Signed)

Its ....
(Title)

Home Office Address:

....
(Street)

....
(City)

....
(State)

....
(Date Signed)

This agreement is approved as to form only by the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and in doing so the International Union assumes no liability whatsoever under this agreement for the performance thereof or otherwise, and by such approval does not become a party to the Agreement.

APPROVED

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

FRANK E. FITZSIMMONS,
General President

New Jersey–New York Area Freight
Council of the
Eastern Conference of Teamsters

NEW JERSEY—NEW YORK AREA GENERAL TRUCKING SUPPLEMENTAL AGREEMENT

For the Period:
July 1, 1973 to March 31, 1976

NEW JERSEY - NEW YORK AREA
FREIGHT COUNCIL OF
THE EASTERN CONFERENCE OF TEAMSTERS
NEW JERSEY - NEW YORK AREA
GENERAL TRUCKING

SUPPLEMENTAL AGREEMENT

Covering Employees of Private, Common, Contract and Local Cartage Carriers for the Period of July 1, 1973 to March 31, 1976 in the jurisdiction of Teamsters Joint Council No. 16 and Teamsters Joint Council No. 73.

PREAMBLE

The ....
(Company)

hereinafter referred to as the Employer and the New Jersey-New York Area Freight Council, and Local Union No. ...., affiliated with the Eastern Conference of Teamsters, and the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, hereinafter referred to as the Union, agree to be bound by the terms and provisions of this Agreement.

ARTICLE 40 — Scope of Agreement

Section 1. **Operations Covered** The execution of this Agreement on the part of the Employer shall cover all truck drivers, helpers, switchers, platform men, warehousemen, checkers, motor lift truck operators, dragline em-

ployees, riggers, office and clerical help, mechanics, garage employees and such other employees as may be presently or hereafter represented by the Union, engaged in the General Trucking Industry and such "rigging work" as may be incidental thereto, within the jurisdiction of the Local Union signatory to this Agreement.

Section 2. **Employees Covered** Employees covered by this Agreement shall be construed to mean, but not limited to, any driver, chauffeur, or driver-helper operating a truck, tractor, motorcycle, passenger or horse-drawn vehicle, or any other vehicle operated on the highways, street or private road for transportation purposes when used to defeat the purposes of this Agreement. The term employee also includes but is not limited to, all employees used in dock work, switching, checking, dragline, stacking, loading, unloading, handling, shipping, receiving, assembling, office and garage work and such other employees as may be presently or hereafter represented by the Union.

Section 3. The additional classifications of office and clerical help, mechanics, and garage employees referred to above shall become part of this Agreement, however, shall be subject to separate negotiations between the parties, and the wages, hours and working conditions to be attached as an Appendix to this Agreement, and become an integral part thereof. The foregoing shall apply only upon the Employer and the Union properly determining that the Union does, in fact, represent a majority of such employees within any of the stated categories.

Section 4. (a) This contract shall govern all wages, hours and other conditions herein set forth. All work covered by this Agreement shall be performed only by employees covered by this Agreement except as otherwise provided herein.

(1) Delivery and/or Pickup Area

Road Drivers shall not make pickup and/or delivery to consignee or shipper except as by past practice of the majority of the industry and the Local Union's recognized past delivery and/or pickup area. Road drivers may make drop off enroute to inbound destination at company terminals but may not pick up freight enroute to destination, however, on return trip to destination road driver may pickup freight at outbound terminal to fill out load to destination. Where there is a dispute concerning pickup and/or delivery, it shall be subject to the grievance procedure. The above shall also apply to movement of empties between terminals.

(2) Where an Employer signatory to this contract changes his operations within the jurisdiction of the area that this Supplement covers, the present employees and present contract shall prevail at the new terminal or location and the displaced employees or the employees affected shall have a right in keeping with their present seniority to move to the new terminal or location with all seniority rights. In no event shall such a change be a violation of this Agreement. Where an Employer moves outside of the area of this Supplement, and has no existing terminal or branch, he shall first offer employment to present employees who are affected or will be affected at the new terminal at their present rates.

Where the Employer presently operates a terminal and increases the need for the employees because of the closing of an existing terminal and operates back into the area of the closed terminal covered by this Supplement, the employees affected by the closing of the terminal shall have full seniority rights, wages and hours presently enjoyed in the area previously serviced.

(b) The operation of all trucks, tractors and trailers owned by or leased to, by or through the Employer while used for delivery and/or pick-up of freight shipped via the Employer in the delivery and/or pick-up area in the jurisdiction embraced by this Agreement, shall be performed exclusively by the employees of the Employer covered by this Agreement.

(c) The movement of equipment from the Employer's place of business to the place where the equipment is serviced or repaired shall be in accordance with past practices in each Local Union.

(d) All inter-terminal movement of freight from the Employer's place of business to other terminals of the Employer or other Employers in the New Jersey and New York area, and all movement of freight from the Employer's place of business destined for railroad or piggyback shipment shall be performed by employees of the Employer governed by this contract.

(e) An Employer who has a terminal in the area of this Supplemental Agreement may not close such terminal and utilize a terminal outside the area not covered by this Supplement to perform the same type of work which he previously performed within the area unless with the approval of the Joint Area Committee.

(f) No Employer within the area of this Supplement shall be permitted to operate a Special Commodity or Steel Division unless agreed to by the Local Union and approved by the Joint Area Committee.

ARTICLE 41 — New Employees

Section 1. **New Employees**

The Employer shall immediately upon employment, notify the Shop Steward, or the Union if there is no Shop Steward, of the employment of any man, who, under this Agreement, is required to be a member of the Union. Upon notice from the Union that any employee who, thirty (30) days from the date of first employment, has failed to tender the periodic dues and initiation fees uniformly required as a condition of acquiring and retaining membership, the Employer agrees to terminate such employee after receipt of seventy-two (72) hours written notice, excluding Saturdays, Sundays and holidays, from a properly authorized official of the Union, certifying that membership has been and is continuing to be offered to such employee on the same basis as all other members and further that the employee has had notice and opportunity to make all dues payments. This provision shall be made and become effective as of such time as it may be made and become effective under the provisions of the National Labor Relations Act, but not retroactively.

Section 2. **Checkoff**

The Employer agrees to deduct from all regular employees covered by this Agreement initiation fees, dues and uniform assessments of the Local Union having jurisdiction over such employees and agrees to remit to said Local Union all such deductions prior to the end of the month for which the deduction is made. Where laws require written authorization by the employee, the same is to be furnished in the form required. No deduction shall be made which is prohibited by applicable law.

Where Local Unions presently have a practice of quarterly dues paid in advance, same shall be continued, and payment by the Employer will be made quarterly, in accordance with past practice.

In the event that an Employer has been determined to be in violation of this article by decision of an appropriate grievance committee and if such Employer subsequently is in violation thereof, after receipt of seventy-two (72) hours written notice, excluding Saturdays, Sundays, and holidays, of specific delinquencies, the Local Union may strike to enforce this article. However, such strike shall be terminated upon the delivery, thereof. Errors or inadvertent omissions relating to individual employees shall not constitute a violation.

By mutual agreement between the Union and Employer, the Employer shall deduct each calendar year dues during the first twelve weeks of each year. If employees have refunds due them for any reason they shall be so compensated.

Section 3. **Blacklist**

The Employer shall not establish or create a so-called "blacklist" nor in any way become a party to the establishing of such a blacklist that may have for its purpose the prevention of any member of the Union obtaining employment with any other Employer or Company.

Section 4. **Hiring Additional Men**

The Employer shall notify the Union when new employees are to be hired. The Union shall have the right to send applicants for the job or jobs and the Employer agrees to interview such applicants and give the same interview considerations to Union sent applicants as is given to applicants from other sources. This provision shall not be deemed to require the Employer to hire Union applicants or to preclude the Employer from hiring employees from other sources. The Employer reserves the right to finally pass on the qualifications and experience of all applicants for employment. During the probationary period of sixteen (16) days in a sixty (60) day calendar period, the employee may be discharged without further recourse; provided, that the Employer may not discharge or discipline for the purpose of evading this Agreement or discriminating against Union members. After the probationary period, the employee shall be placed on the regular seniority list. In case of discipline with the probationary period, the Employer shall notify the Local Union in writing.

If employees are hired through an employment agency, the Employer is to pay the employment agency fee. However, if the Union was given equal opportunity to furnish employees under Article 41, Section 4, and if the employee is retained

through the probationary period, the fee need not be paid until the thirty-first (31st) day of employment.

Past practice shall apply to those companies which in the past employed lie detector and fingerprint test for all new permanent applicants, but shall not apply to individuals with seniority, or casual employees. No other companies shall institute this practice without mutual agreement between the Company and the Union.

Section 5. **Supervisory Personnel**

Supervisory personnel of the Employer shall be restricted from performing the work which is recognized as the work of the employees covered by this Agreement, except for purposes of instruction, or in accordance with Article 9.

ARTICLE 42 — Stewards

Stewards shall be granted super-seniority for all purposes including layoff, rehire, bidding, and job preference. One steward on the morning dispatch, in compliance with regular starting times, shall be the last man to leave the terminal.

The Union reserves the right to remove the shop steward at any time, for the good of the Union.

The job steward is recognized by the Employer to have no right to enter into any form or type of agreement with the Employer, except as authorized by the Local Union.

ARTICLE 43 — Leave of Absence

***Section 1.* Time Off for Union Activities** The Employer agrees to grant the necessary and reasonable time off without discrimination or loss of seniority rights and without pay, to any employee designated by the Union to attend a labor convention or serve in any capacity on other official Union business, provided forty-eight (48) hours' written notice is given to the Employer by the Union, specifying length of time off. The Union agrees that, in making its request for time off for Union activities, due consideration shall be given to the number of men affected in order that there shall be no disruption of the Employer's operations due to lack of available employees.

***Section 2.* Leave of Absence** Any employee desiring leave of absence from his employment shall secure written permission from both the Local Union and Employer. The maximum leave of absence shall be for six (6) months and may be extended for like periods. Written permission for extension must be secured from both the Local Union and the Employer. During the period of absence, the employee shall not engage in gainful employment in the same industry in classifications covered by this contract. Failure to comply with this provision shall result in the complete loss of seniority rights for the employees involved. Inability to work because of proven sickness or injury shall not result in the loss of seniority rights. The employee must make suitable arrangements for continuation of Health and Welfare and Pension payments, where legally permissible, at his own expense before

the leave may be approved by either Local Union or Employer.

***Section 3.* Union Activity** (a) An employee who is a candidate for Union election shall be granted a two (2) weeks leave of absence.

(b) Any employee who is designated by the Union to work for the Union on a full time basis shall be granted a leave of absence, with no loss of seniority, for the duration of his full time employment provided he reports back to work to the Employer within ninety (90) days after his employment with the Union is terminated and does not work for any other Employer in the Industry during such period.

ARTICLE 44 — Seniority

***Section 1.* Seniority Principle** Seniority shall prevail in that the Employer recognizes the general principle that senior employees shall have preference to choose their shifts and to work at the job for which the pay is highest, provided such employee is qualified for such work. Seniority does not give an employee the right to choose a specific unit, run, trip or load.

When an employee has worked sixteen (16) days in any sixty (60) day period, he shall be placed on the seniority list as of his first day of hire. No employee can have seniority with more than one Employer except as provided in Article 34, Moonlighting. Seniority rights for employees shall prevail. The Union and the Employer shall agree on whether such seniority shall be measured by length of service in the job classification at the terminal or by length of service at the terminal.

***Section 2.* Seniority Rank and Posting** (a) Within thirty (30) days after signing of this Agreement, the Employer shall post in a conspicuous place at th Employer's terminal, a list of employ arranged according to their senio Claims for corrections to such lists mus be made to the Employer within ten (10) days after posting and after such time the lists will be regarded as correct. Any controversy over the seniority standing of any employee on such lists if raised within such ten (10) day period shall be subject to the Grievance Procedure as established by this Agreement.

(b) New employees shall be placed on the regular seniority list, with seniority dating from date of hire, as provided in Article 41, Section 1 of this Agreement.

***Section 3.* Loss of Seniority** (a) Seniority shall be broken only by:

(1) Failure to respond to a notice of recall as specified in Section 4 of this Article.

(2) Unauthorized leave of absence.

(3) Unauthorized failure to report for work for seven (7) consecutive days when work is available.

(b) Any employee who is absent because of proven illness or injury shall maintain his seniority.

***Section 4.* Layoff and Recall** (a) When it becomes necessary to reduce the working force, the last man on the seniority list shall be laid off first and when the force is again increased, the men are to be returned to work in the reverse order in which they are laid off.

(b) In the event of a recall, the laid-off employee shall be given notice of recall by telegram, registered or certified mail, sent to the address last given the Employer by the employee. Within three (3) calendar days after tender or delivery at such address of the Employer's notice, the employee must notify the Employer by telegram, registered or certified mail of his intent to return to work and must actually report within seven (7) calendar days after date of tender of delivery of the recall notice, unless it is mutually agreed that the employee need not return to work within seven (7) calendar day period. In the event the employee fails to comply with the above provisions, he shall lose all seniority rights under this Agreement and shall be considered as a voluntary quit.

***Section 5.* Merger, etc.** The following rules shall govern the exercise of seniority rights by the employees of the Employer and the members of the Local Unions affiliated with Joint Councils No. 73 and No. 16 who have similar provisions in their contracts.

(a) Definition of Seniority:

(1) Company or classification seniority, as used in this Section 5 is defined as the seniority which an employee acquires from his earliest date of hire in the company as a whole either by classification or by over-all seniority whichever previously prevailed.

(2) Terminal seniority is defined as the seniority which an employee acquires from his earliest date of hire at a specific branch, terminal, division or operation of the company.

(3) Within the area of this Supplement, when a branch, terminal, division or operation is closed or partially closed and the work of the branch, terminal, division or operation is transferred to another branch, terminal, division or operation in whole or in part, an employee employed at the closed or partially closed down branch, terminal, division, or operation shall have the right to transfer to the branch, terminal, division or operation into which the work was transferred, and to exercise his seniority on a company or classification basis in the affected terminal, branch, division or operation.

(b) Merger:

When two or more companies merge their operations then the employees of the respective companies shall all be placed on one seniority roster in the order of the earliest date of hire of each of the employees with their respective Employer.

(c) Acquisition or Purchase:

When one company acquires or purchases control of the business of another company then the employees of the company so acquired or purchased shall be placed at the bottom of the acquiring or purchasing company's seniority roster in the order of their payroll or company seniority with the former company. Seniority shall be established as of the date of the filing of the application providing the application is subsequently approved by the ICC.

(d) In any case, whether it is a purchase, merger, consolidation, acquisition, etc., the employees involved shall retain their over-all seniority for all fringe benefits.

(e) Regulatory Agencies:

The decision of the Interstate Commerce Commission or state regulatory body shall be considered as presumptive proof as to the nature of the transaction relative to mergers, purchases, acquisitions, and/or other combinations of two or more contract or common carriers. The company or companies involved shall present an affidavit to the Union as to their intent to merge, purchase, etc.

(f) Disputes Procedure:

If a dispute arises concerning the interpretation or application of the foregoing provisions dealing with seniority, then the subject matter of such dispute may be taken up by the aggrieved party with the Joint Area Committee provided for herein.

Section 6.

House Concerns

Where the Employer acquires or has acquired the work, or trucks of any so-called "House Concern" whose employees are being organized or are already organized, the employees of said concern shall be confined exclusively to the work they performed while in the employ of said concern. Those employees shall hold seniority on the work of said concern as if they were actually employed by said concern, in addition to maintaining a seniority standing on the Employer's seniority list from the day such employees started to work on the Employer's payroll. If, however, there is no work for said employees on the "House Concern's" work, the said employees shall work, in their proper seniority as of the date of hire by the Employer on the Employer's work and shall be governed by the terms of this Agreement. Past practices shall prevail as to when "House Concern" employees may exercise their company-earned seniority on jobs other than their "House Concern" job.

Section 7. Seniority shall prevail in selection of starting time so the oldest man in seniority shall have the earliest starting time if he so elects (provided he is qualified). Regular bid shall be for a period of six (6) months, except by mutual agreement between the Union and the Employer.

ARTICLE 45 — Joint Grievance Committees

Section 1.

Joint Local Committees

The Employers and the Local Union or Local Unions within each Local Union area or areas shall continue the present Joint Local Committee. The Committee shall consist of an equal number designated by the Employers and the Local Union or Local Unions, but no less than three (3) from each side. The rules of procedure to govern the conduct of its meeting shall continue as presently in effect. The Joint Local Committee shall have jurisdiction over disputes and grievances involving the Employer and the Local Union or Local Unions in accordance with the procedure established in Article 46 of this Agreement. Where no Joint Local Committee presently exists, the same shall be established within sixty (60) days from the signing of this Agreement and the Employers shall submit a list of their panel members. In the event such Committee is not established within the sixty (60) day period, the Local

Union shall have the right to take all lawful or economic action.

Section 2.

Joint Area Committee

The Employers and the Local Unions shall together create a Joint Area Committee. A Joint Area Committee shall consist of an equal number of members and alternates as designated by the Employers and Local Unions, parties to the New Jersey-New York Area General Trucking Agreement, but not less than three (3) from each side. Each member and alternate's name shall be registered with the Secretary of the Joint Area Committee. The Joint Area Committee shall establish the rules of procedure to govern the conduct of its meetings.

The Joint Area Committee, in accordance with the procedures established in Article 46 of this Agreement, shall have jurisdiction over disputes and grievances involving the Employers and Local Unions which cannot be settled by majority vote of the Joint Local Committee. The Joint Area Committee shall review and approve rules of procedure formulated by the Joint Local Committees solely for the purpose of assuring that consistent procedures will be followed and adequate records kept.

Section 3.

Eastern Conference Joint Area Committee

The Employers and the Local Unions shall together create a permanent Eastern Conference Joint Area Committee which shall consist of delegates from the Eastern Conference Area. This Eastern Conference Joint Area Committee shall meet at established times and at a mutually convenient location.

The Committee shall also act as final authority, except as otherwise provided in Articles 8 and 46 of this Agreement, on all matters involving questions of the meaning or import of any clause or provision of this Agreement, decisions which would have general application to the majority of Employers and Local Unions who are parties to this Agreement.

Section 4. **Contiguous Territory**

If a dispute or grievance arising out of operations under this Agreement involves a Local Union situated in contiguous territory, such dispute or grievance shall be referred to any of the above Joint Committees for handling by the Executive Secretary of the Eastern Conference of Teamsters, and after such reference shall be handled under the usual procedure of the Joint Committee.

Section 5. **Function of Committees**

It shall be the function of the various committees above-referred-to, to settle disputes which cannot be settled between the Employer and the Local Union in accordance with the procedures established in Article 46. All Committees established under this Article may act through subcommittees duly appointed by such Committee.

Section 6. **Attendance**

Meetings of all Committees above-referred-to, must be attended by each member of such Committee or alternate.

Section 7. **Examination of Records**

The Local Union, Joint Local Committee, Joint Area Committee or the Eastern Conference Joint Area Committee shall have the right to examine time sheets and any other records pertaining to the computation of compensation of any individual or individuals whose pay is in dispute, or records pertaining to a specific grievance.

Section 8. **National Grievance Committee**

Grievances and questions of interpretation which are subject to handling under the provisions of Article 8 of the National Agreement shall be referred to the National Grievance Committee.

Section 9. **Joint Labor Management Committee**

(a) Pursuant to the agreement of the parties signatory to this Agreement to maintain conditions of employment, wages, etc., set forth herein at the highest standard in effect at the time of execution of this Agreement, and to preserve the essence of the Agreement, the Employers and the Local Unions shall together create a Joint Area Competitive Equity Committee and same shall be established for the express purpose of handling cases involving alleged substandard wages, health, welfare and pension contributions, conditions of employment and/or other practices detrimental to the best interest of the trucking industry and the integrity of the Labor Agreement.

(b) The Committee shall consist of an equal number of members and alternates as designated by the New Jersey-New York Employer and Union Negotiating Committee. The Committee shall establish the rules and procedures to govern the conduct of its meetings and shall be funded and staffed as directed by the Union and Employer Negotiating Committees.

(c) All signatory Employers hereby agree to immediately present either upon demand or pursuant to Committee decision, all Company operation, payroll, and health, welfare and pension contribution records requested by the Committee.

(d) All signatory Local Unions hereby agree to immediately present to this Joint Committee, either upon demand, or pursuant to Committee decision, any contracts, wages, hours, or conditions of employment which are applicable to any or all of the operations of any signatory Employer and/or which are competitive with those operations of signatory Employers which are subject to the provisions of the National Master Freight Agreement and/or the New Jersey-New York Supplemental Agreement.

(e) All decisions rendered by such Joint Area Competitive Equity Committee shall be final and binding upon the parties. Deadlocked cases will be submitted to the New Jersey-New York Joint Area Committee and if deadlocked by the New Jersey-New York Joint Area Committee the case will be submitted to the Eastern Conference Joint Area Committee.

(f) In order to maintain competitive equity, upon the complaint of any member of the Joint Area Competitive Equity Committee, Joint Council #16 and/or Joint Council #73, and the Eastern Conference of Teamsters and International Brotherhood of Teamsters, shall immediately present, and jointly review with the Committee the contracts, wages, health, welfare and pension contributions and conditions of employment negotiated or applied by the Unions not signatory to the National Master Freight Agreement and/or the New Jersey-New York Supplemental Agreement, and which are or may be competitive with those operations of signatory Employers which are subject to the provisions of the National Master Freight Agreement and/or New Jersey-New York Supplemental Agreement.

Following the review of said complaint and if such complaint is substantiated it is agreed that Joint Council #16 and/or Joint Council #73, and the Eastern Conference of Teamsters and International Brotherhood of Teamsters will take any and all actions that may be necessary and proper.

Section 10. **Moving Expenses**

Where any employee is required, through no fault of his own, to change residence in order to follow employment as a result of an approved change of operations, the Employer shall move the employee or pay his moving expenses. This shall not apply to moves within a 50 mile radius. The Employer shall not be responsible for moving or moving expenses if employee changes his residence as a result of voluntary transfer. Moving costs shall include packing costs on redomicile and insurance against losses.

ARTICLE 46 — Grievance Procedure and Union Liability

Section 1. The Union and the Employer agree that there shall be no strike, lock-out, tie-up, work stoppage, or legal proceedings without first using all possible means of a settlement, as provided for in this Agreement, of any controversy which might arise. Disputes shall first be taken up between the Employer and the Union involved. All grievances must be made known to the other party within five (5) days, excluding Saturdays, Sundays, and holidays, after the reason for such grievance has occurred. The five (5) day requirement does not apply to grievances involving wages, seniority and fringe benefits after the Union has secured knowledge of the grievance. In the event that the Employer and the Union involved are unable to adjust the matter, the dispute shall, within two (2) days, excluding Saturdays, Sundays and holidays, after the request of either party, be reduced to writing and referred to the Joint Local Committee and the following procedures shall then apply:

(a) Where a dispute concerns a matter of discharge the Employer and the Union shall submit the matter to final and binding arbitration. In cases of voluntary or involuntary quit, such dispute(s) may be submitted to the Joint Local Committee for decision. In the event of a case involving a voluntary or involuntary quit is deadlocked by the Joint Local Committee, such case must then be referred to arbitration as set forth below in this Article. Such arbitration shall be selected through the following procedures:

The New Jersey State Mediation Service in cases involving Locals 469, 478, 560, 617, 641, 660 and 701.

The New York City Trucking Arbitration Authority in cases involving Locals 282 and 807. Hugh E. Sheridan to arbitrate cases involving Local 816. Herman Gray to arbitrate cases involving Local 240.

In cases involving Local 707 and 814, either the American Arbitration Association or by mutual agreement a staff Arbitrator of the New York State Board

Committee is deadlocked, the matter shall be submitted to final and binding arbitration by the Joint Local Committee as set forth above.

All time lost by the employees engaged in economic action because of an Employer's failure to abide by a decision made pursuant to this Article shall be reimbursed by the Employer, provided that if there is a dispute as to the amount of reimbursement, such dispute must be resubmitted to the Arbitrator or the appropriate Joint Committee.

(b)(1) Where a Joint Local Committee, by majority vote, settles a dispute, no appeal may be taken to the Joint Area Committee. Such decision shall be final and binding on the Local Union, the Employer and any employee(s) involved. Matters of interpretation of this Agreement, as defined in Article 45 of this Agreement, shall be referred to the Joint Area Committee for final decision at the request of any party.

(2) In the case of Local 701, all wages, hours and conditions of employment and all established local past practices in the Agreement expiring on October 31, 1967, which are better than the conditions set forth in the National Master Freight Agreement and the New Jersey-New York Supplement thereto shall be maintained and set forth in the Rider of the Local Union. Any grievance or dispute concerning the aforementioned matters shall be adjusted or processed in accordance with the grievance and arbitration procedure set forth in the Local 701 Agreement which expired October 31, 1967.

of Mediation or the New York State Boar[illegible] Mediation. The choice of the arbit[illegible]on agency shall be made by the Union; and the Employer agrees to abide by the choice made by the Union.

In cases involving Local 445, the matter shall be submitted to the Joint Local Committee for determination. In the event the Joint Local Committee deadlocks, the dispute is then referred to final and binding arbitration. Such arbitrator shall be selected by mutual agreement between the Chairman of the Union panel and the Chairman of the management panel. If the chairmen cannot agree, then the matter shall be submitted to the New York State Mediation Service for disposition.

Within fourteen (14) days of conclusions of the arbitrator's hearing, the arbitrator shall mail, by registered mail, to all parties involved, a copy of his decision or award. Failure of any party involved to comply with such decision or award within ten (10) days thereafter, will remove restrictions against any legal or economic recourse by the other party as prohibited by Section 1 of this Article, notwithstanding any action taken to set aside, confirm, modify, or enforce such decision or award, until such time as the award is actually vacated, it being the intention of the parties that decisions and awards rendered pursuant to the procedures set forth in this Article be complied with immediately regardless of any legal proceedings. If, however, the Employer and Union agree that a dispute relative to discharge be submitted to the Joint Local Committee, the majority decision of that Committee will be final and binding on all parties. In the event such Joint Local

All other disputes and grievances shall be processed in accordance with the provisions of the National Master Freight Agreement and New Jersey-New York Supplement except that deadlocked cases before the Joint Local Committee or if there is no such Committee where the parties are unable to resolve a grievance shall go directly to the Eastern Conference Joint Area Committee for decision.

(c) Where a Joint Local Committee is unable to agree or come to a decision on a case, the dispute shall be promptly submitted to the Joint Area Committee. By mutual agreement the parties may waive the Joint Area Committee step and submit any case deadlocked by the Joint Local Committee to the Eastern Conference Joint Area Committee. Such cases as are referred shall include the minutes of the Joint Local Committee's proceedings on the case. Such minutes shall set forth the positions and facts relied on by each party, but each party may appear and present evidence at the hearing before the Joint Area Committee or the Eastern Conference Joint Area Committee.

(d) Where the Joint Area Committee, by a majority vote, settles a dispute, no appeal may be taken to the Eastern Conference Joint Area Committee. Such decision shall be final and binding on both parties with no further appeal.

(e) Decision shall be issued on cases submitted to the Joint Area Committee within fourteen (14) days after such submission, unless otherwise mutually agreed.

(f) Where the Joint Area Committee is unable to agree or come to a decision on a case, it shall, at the request of the Union or the Employer involved, be appealed to the Eastern Conference Joint Area Committee at the next regularly constituted session. Where any Committee established under this provision, by majority vote, settles a dispute such decision shall be final and binding on both parties and the employee(s) involved, with no further appeal.

(g) It is agreed that all matters pertaining to the interpretation of any provision of this Supplement, as defined in Article 45, of this Supplement, shall be referred at the request of the Local Union or Employer at any time to the Joint Area Committee for decision.

It is agreed that all matters pertaining to the interpretation of any provision of this Agreement not settled by the Joint Area Committee, may be referred by the Joint Area Secretary for the Unions or the Joint Area Secretary for the Employers at the request of either the Employers or the Unions, parties to the issue, with notice to the other Joint Area Secretary, to the Eastern Conference Joint Area Committee at any time for final decision.

It is further agreed that all decisions of Joint Local Committees on matters pertaining to the interpretation of this Agreement, as defined in Article 45, of this Agreement, shall automatically be reviewed by the Joint Area Committee and that any decision of the Joint Local Committee may be reviewed by the Joint Area Committee on its own initiative at any time if any member thereof has reason to believe such decision could be or is being construed as interpretation of contract as defined in this Agreement.

The sole purpose of this paragraph is to assure clear and uniform understanding of the meaning of all provisions of this Agreement by all parties hereto. The Joint Area Committee shall inform all parties to this Agreement of any decision involving interpretation of this Agreement.

(h) Deadlocked cases may be submitted to umpire handling if a majority of the Eastern Conference Joint Area Committee determines to submit such matters to an umpire for decision. Otherwise, either party shall be permitted all legal or economic recourse.

(i) Failure of any Joint Committee to meet without fault of the complaining side, refusal of either party to submit to or appear at the grievance procedure at any stage, or failure to comply with any final decision, withdraws the benefits of Article 8 and 46.

(j) In the event of strikes or work stoppages or other activities which are permitted in case of deadlock, default, or failure to comply with the majority decisions, no interpretation of the Agreement by any tribunal shall be binding upon the Union or affect the legality or lawfulness of the strike unless the Union stipulates to be bound by such interpretation, it being the intention of the parties to resolve all questions of interpretation by mutual agreement. Where a strike is in violation of this Agreement or any law including but not limited to, violations of Sections 301 or 303 of the National Labor Relations Act, all issues of liability shall be resolved pursuant to the grievance procedure.

(k) The procedures set forth herein may be invoked only by the Union's authorized representative or the Employer.

(l) The decisions of the Joint Local Committees, Joint Area Committee, the Eastern Conference Joint Area Committee and the arbitrators appointed in accordance with the procedures set forth herein shall be final and binding on all parties involved, and employee(s) affected. Such Committees or arbitrators shall not be empowered to add to or subtract from this Agreement or render any decision in conflict with the Agreement or which modifies this Agreement in any way. Such Committees or arbitrators may, in cases involving disciplinary action including discharge, suspension or disciplinary action as they may deem just and equitable.

Section 2. **Interpretation of Grievance Procedures**

Questions or disputes concerning the interpretation application or enforcement of the grievance procedures provided in this Agreement shall themselves be deemed arbitrable before the Joint Local Committees subject to the appeals procedures set forth in this Article.

Section 3. **Time for Taking Appeals**

All appeals permitted to be taken in accordance with the procedures set forth in this Article must be taken within fourteen (14) days from the date of receipt of the decision or award.

Section 4.

It is agreed and understood that, in all cases of an unauthorized strike, walk-out, or any other unauthorized cessation of work in violation of this Agreement, the Union shall not be liable for damages resulting from such unauthorized acts of its members, while the Union shall undertake every reasonable means to induce such employees to return to their jobs during any such period of unauthorized stoppage of work.

It is specifically understood and agreed that the Employer, during the first twenty-four (24) hour period of such unauthorized work stoppage, shall have the sole and complete right of reasonable discipline, short of discharge; and such employees shall not be entitled to have any recourse to any other provisions of this Agreement.

ARTICLE 47 – Discharge or Suspension

Section 1. **Warning Notice**

The Employer shall not discharge nor suspend any employee without just cause and the written notice of discharge or suspension must set forth the specific reason(s) for such action. In respect to discharge or suspension, the Employer shall give at least one warning notice of the specific complaint against such employee, in writing, and a copy of the same to the Union and the shop steward. except that no warning notice need be given to any employee before he is discharged or suspended if he is discharged or suspended for any of the causes listed in Section 2 below or suspended for theft of time. The Employer shall not discipline any employee without just cause based upon valid written warning notices sent within the applicable time periods set forth hereinafter. No disciplinary notice shall be considered valid unless it is in writing, has [illegible] delivered to the employee, personally or by certified mail to the address given to the Employer by the employee or his job steward and sent certified mail to the Union, and sets forth therein in full the specific grounds and circumstances upon which it is based. Warning notices only, shall be handed to the employee and not mailed to his home. No warning letter or letter of suspension shall be considered valid unless issued by the Employer within seven (7) days, excluding Saturdays, Sundays, and holidays, from the date the Employer knew of or reasonably should have become aware of the specific grounds and circumstances upon which it is based.

No disciplinary notice may be introduced in any grievance or arbitration hearing which has not been issued within six (6) months from the date of the disciplinary notice, except in the case of notices concerning accidents, within nine (9) months from the date of the disciplinary notice. Failure of an employee or Union to grieve or protest a warning letter to which no other discipline has been attached, when given, shall in no manner be deemed prejudicial to said employee in a future grievance or arbitration hearing involving said warning letter.

An employee shall not be suspended until the Local Union has been given forty-eight (48) hours written notice. Saturdays, Sundays, and Holidays shall be excluded in determining the forty-eight (48) hour period.

Section 2. [illegible]

[illegible] only causes for immediate discharge [illegible] employee shall be for proven theft of money, goods, or merchandise during working hours, proven drunkenness, or proof of being under the influence of liquor or drugs during working hours, calling an unauthorized strike or walkout, assault on Employer or his representative during working hours, failure to report

an accident which the employee would normally be aware of, proven recklessness resulting in a serious accident while on duty, or the carrying of unauthorized passengers in the cab of a truck while on duty, engaging in unauthorized transportation of merchandise or goods for personal gain during working hours. Although theft of time shall not be cause for immediate discharge, it is recognized as an offense for which severe disciplinary measures may be invoked. When an employee is discharged, the Employer shall notify the Union in writing.

Section 3. **Appeal from Discharge or Suspension**

A discharged employee must notify his Local Union in writing within two (2) working days of his desire to appeal the discharge or suspension.

Notice of appeal from discharge or suspension must be made to the Employer in writing by the Union within five (5) days from date of discharge or suspension. If the Employer and Union are unable to agree as to a settlement of the case, then it may be appealed to the grievance machinery as set forth in Article 46.

Section 4. **Separation of Employment**

In accordance with Article 23 of the National Master Freight Agreement, earned vacation time shall be included in such payment.

ARTICLE 48 — Bonds

Failure of employees on the Employer's payroll as of the effective date of this Agreement to meet the qualifications for bonding shall not be grounds for dismissal.

ARTICLE 49 — Pay Period

All regular employees covered by this Agreement shall be paid in full each week. Not more than one week's pay shall be held on an employee. The Employer agrees to pay additional or extra men at the completion of their work whenever it is possible to do so or will mail a check within twenty-four (24) hours to the employee at the address designated by the employee.

When the regular pay day occurs on a holiday, the Employer shall pay the employees on the regular work day immediately preceding the holiday. The Employer shall pay in cash or make suitable arrangements to cash checks on pay day. Each employee shall be provided with a statement of gross earnings and an itemized statement of all deductions made for any purpose.

With regard to pay shortages, the Company will take prompt, corrective action after notification and pay such shortage to the employee no later than the next pay period.

ARTICLE 50 — Job Duties and Classifications

Section 1. An employee in one job classification may be used in another job classification only if no work opportunities are lost by men on the seniority list in the job classification to which he is transferred.

(a) Drivers

A driver is one who drives motorized equipment in the delivery and/or pickup

of freight or in the moving of equipment. Drivers may make pickups and/or deliveries of freight to and from the ground, sidewalk, platform, connecting line and/or within the premises of the consignee or shipper.

There shall be no "feeding" of trucks or trailers to drivers at or near pickup and/or delivery places. A driver may be required to stack freight in the body of the truck or trailer and may be required to take freight to the tailgate of the truck or trailer in unloading at the Employer's terminal.

Where drivers and helpers have not previously worked on the platform at the Employer's termnial, the performance of platform work will be subject to mutual agreement between the Local Union and the Employer.

(b) Helpers

A helper may assist a driver in performing the pickup and/or deliveries the driver is called upon to make. Helpers may be required to load or unload the vehicle at the Employer's terminal.

(c) Platform Men

Platform men shall move, load and/or unload freight and perform other duties in accordance with past practice.

(d) Checkers

Checkers' duties shall consist of the checking of freight at the Employer's place of business. Checkers may be required to perform platform men's duties.

(e) Hi-Lo Men

A Hi-Lo man operates a motorized lift truck. He may be required to perform platform men's and/or checking duties as assigned.

(f) Warehousemen

A warehouseman's duties shall consist of the handling of all freight in the warehouse of the Employer, including the loading and unloading of freight.

(g) Classification pertaining to platform work shall be the gang or utility system: (1) The Gang System. Comprised of checker, stacker, pusher or stripper. Checker to perform no other duty than check. (2) Utility System. Defined as "one man" gang, who may check, push stack or strip simultaneously. The Utility System, when used, the man will be paid seven cents (7¢) an hour above the regular platform rate. The utility rate shall also apply to hi-lo men, when performing the above work.

(h) Riggers

Rigging work covered by this Agreement shall be work obtained by the Employer on the basis of the Rigging Tariffs (Heavy Hauling). All employees assigned to rigging work shall be paid the wages shown in Article 51, Section 1 of this Agreement.

(i) All moving of trucks, tractors and trailers in and about the Employer's place of business shall be performed by drivers, in the employ of the Employer, who are governed by this Agreement, except that:

(1) An over-the-road driver shall have the right to back into the terminal platform so that his truck or trailer may be unloaded or reloaded. He shall have a similar right to drive away from the Employer's platform on his return trip to drop and/or pickup a trailer or truck at the Employer's terminal unless the terminal is closed.

(2) If, at the time of arrival, due to congestion at the platform, or for other reasons, the road driver does not back his truck into the platform, but leaves it in the yard, street, or nearby lot, then going on about his business, the truck or trailer unit shall be considered as having "come-to-rest."

(3) Once the over-the-road unit has "come-to-rest," in the terminal area, all further moving about of the truck or trailer shall be deemed local work to be performed by a local driver.

Section 2. The movement of trailers to and from the Employer's terminal shall be performed by city drivers working under this Agreement.

Nothing in this Agreement shall prevent the Employer from leaving unattended trailers at the place of business of shipper or consignee providing it is not for the purpose of avoiding the following:

1. Dropping of trailer to avoid the paying of a lunch hour.

2. Dropping of trailers to avoid premium day pay.

3. Dropping of trailers where loading or unloading is not performed by regular employees of the Employer at whose place of business the trailer is dropped.

4. Dropping of trailers where it is in conflict with the first paragraph of this Section.

Maintenance of Standards provision shall apply to all past practices and conditions prevailing in each Local Union under this provision.

During the term of this Agreement, the Employer shall not directly, or indirectly, through himself, or itself, or through any other firm, corporation, partnership or other entity, operate, maintain or conduct any establishment or place of business for the purpose of evading, or which actually evades any of the terms of this Agreement.

Any dispute shall be referred to the grievance machinery.

Section 3. When an Employer maintains a terminal or loading dock for the purpose of loading, unloading or sorting, or checking and stripping of freight to be loaded from a "piggy-back" "fishy-back," "birdie-back," or other freight container destined to or from another carrier for movement via "piggy-back," "fishy-back," "birdie-back," or similar type operation, such loading, unloading and sorting, checking and stripping, shall be considered local work and shall be performed by employees employed under this Agreement. The provisions of this paragraph shall not apply to bona fide operations conducted by a regulated freight forwarder for forwarding via railroad, or other conveyance.

ARTICLE 51 — Wages

Section 1. The job classifications and wage rates for each Local Union are set forth in Appendix A and by reference hereto made a part of this Agreement. The minimum wage increase across the board shall apply to all present employees in the classifications set forth in Appendix A. New employees and present employees changing classifications shall receive the rate set forth in Appendix [illegible]

Any chauffeur driving windlass trucks shall receive one dollar ($1.00) per day over the wage scale listed above when using windlass.

All employees covered by this Agreement assigned to night work shall receive one dollar ($1.00) per day over the wage scale listed above. The one dollar shall be added to the wage scale in computing overtime and vacation pay.

Rigging work

Truck drivers and helpers shall receive the same modulated increase as above in their respective classifications. Where a Local Union has an industry-wide Rigging Agreement which has in the past been subject to separate negotiations, the same shall continue to be subject to separate negotiations and the Employers party hereto agree to be bound by such negotiations on any rigging work which they perform. The Employers agree to respect and abide by the jurisdictional rules and determinations of the Union concerning rigging work.

Section 2. No night work shall start before 4:00 p.m.

Section 3. Any employee required to appear in court at the request of the Employer or at the summons of the National Labor Relations Board and the New Jersey State Mediation Board or the New York State Labor Relations Board as a result of some action taken on behalf of the Employer shall be paid in full for lost time by the Employer. No payment shall be less than a full day's pay, but the employee shall be available for work if the proceedings do not extend the full day. When an employee is required to appear in court for the purpose of testifying because of an accident he may have been involved in during working hours, such employee shall be reimbursed in full for all time lost unless the employee is proven to have been under the influence of intoxicating liquor or narcotics.

Section 4.

Bereavement Leave

In case of a death in an employee's immediate family (i.e., spouse, mother, father, sister, brother, children, mother-in-law, father-in-law), the Employer shall grant such employee a maximum of three (3) days off with pay for the express purpose of attending services for the deceased. Death certificate or other satisfactory proof of death must be submitted to the Employer. The employee must be on the seniority list for at least six (6) months. Two (2) days guaranteed regardless of day of death or day of funeral.

ARTICLE 52 — Workday and Workweek

Section 1.

Regular Workday and Workweek

(a) Eight (8) consecutive hours, exclusive of a meal period as specified in Article 53 of this Agreement shall constitute a regular day's work, Monday to Friday, inclusive.

(b) Employees assigned to work each day, Monday to Friday inclusive shall be guaranteed a minimum of eight (8) hours of work or pay.

(c) Wherever used throughout this Agreement, a "day's pay" or "a regular day's pay" shall be understood to mean pay equivalent to eight (8) hours at the employee's regular straight time hourly rate, according to his wage classification, except as may otherwise be specifically provided in this Agreement.

Section 2.

Overtime and Sunday and Holiday Pay

(a) Overtime—Monday to Friday and Saturdays.

(1) All hours worked in excess of eight (8) hours per day, Monday to Friday inclusive, shall be paid for at the rate of time and one-half.

(2) Employees who begin work on Saturday shall be paid at the rate of time and one-half the straight time hourly rate until relieved from duty, with a minimum of five (5) hours, twenty (20) minutes work or pay. In operations where employees receive a greater guarantee, Article 6, Maintenance of Standards shall apply.

(b) Sunday and Holiday Pay.

(1) All hours worked on Sunday shall be paid for at the rate of double straight time, with a minimum guarantee of eight (8) hours work or pay. All hours worked in excess of eight (8) hours on a Sunday shall be paid for at the rate of three times the straight time hourly rate.

(2) All hours worked on any of the holidays listed in Article 57 of this Agreement (except such holidays as fall on Saturday) shall be paid for at the rate of double straight time, with a minimum guarantee of eight (8) hours work or pay. All hours worked in excess of eight (8) on any such holiday shall be paid at the rate of three times the straight time hourly rate. Senior employees may refuse to work on a holiday, however, all jobs must be covered by junior men on the seniority list.

(3) Employees who are assigned to work on an evening prior to a holiday, and whose work ends on a holiday, shall work the hours necessary to complete that day's work at the regular rate of that day, and the regular overtime rate shall be paid thereafter until the regular starting time of the next day, at which time the holiday overtime hourly rate shall apply until he completes his work.

(4) Employees assigned to work on a Sunday evening, or the evening of a holiday (except where the holiday falls on Saturday in which case paragraph (5) shall apply) and whose work ends on the following day, shall be paid at the Sunday or holiday rate until 12:00 midnight, at which time the regular hourly rate of pay shall apply until he has completed eight (8) hours of work. For all work in excess of eight (8) hours, the regular overtime rate shall apply. If such employees work more than eight (8) hours, they shall be paid at the overtime rate applicable for that day. Maintenance of standards shall apply.

(5) All hours worked on Saturday that is a holiday shall be paid at the rate of time and one-half straight time, plus the holiday pay, with a minimum guarantee of five (5) hours and twenty (20) minutes work or pay. Hours worked in excess of eight (8) on such holiday Saturday shall be paid for at the rate of three (3) times the straight time hourly rate.

Section 3.

Starting Time

(a) A regular day's work may be assigned at 7. a.m. to 8 a.m., starting time to be computed from the time of the employee's arrival at the Employer's terminal until leaving the same. (Premium days included.)

(b) If an employee is required to report for work before 7 a.m., he shall be paid for such period at the overtime rate applicable for that day. Where an employee is required to report for work at 8 a.m., or any time thereafter, until 4 p.m., the starting time shall be as of 8 a.m., and the employee shall be paid a full day's pay.

(c) Any employee ordered to work after the regular starting time shall have his time revert back to his regular starting time. No change of such starting times shall be made by the Employer unless approved by the Union. In the event the Union and the Employer are unable to agree on the change of starting time, the issue may be submitted to the grievance procedure.

(d) LATE REPORT: Employees late for assignments shall be placed at the bottom of the seniority list for that day.

Section 4. Each employee shall "punch in" his own time card at the start of the day, and "punch out" his own time card at the completion of the day's work.

In the event that any employee is ordered to report at, or leave his vehicle at, a different place than his usual starting point, such employee shall be paid transportation expenses. Each employee shall begin and end his workday at his Employer's place of business to which he is regularly assigned or shall be paid for the time it takes to travel to and/or from such location.

Section 5. **Relief from Duties** Once a man has completed a day's work or a night's work, he shall be relieved from duty for a period of at least eight (8) hours, before he may be given a new assignment except in the case of an Act of God, or in the case of Locals 282 and 807 where the Employer is unable to secure a replacement and the Union is unable to supply a replacement. His right to work the next day or night, however, shall in no way be impaired. He must be put to work and, regardless of whatever time it is he starts after his minimum eight (8) hours of relief except as stated above. However, his time shall be computed from 8:00 a.m., if he works on a day shift and from the time he normally works if he works on the night shift.

Maintenance of Standards shall apply to Local 816.

ARTICLE 53 — Meal Period

Section 1. **Length** One (1) hour (sixty (60) consecutive minutes) shall constitute the full meal period for all employees, except by mutual consent of the Union and the Employer, a lesser time for men on "rigging work" and platform workers on night work, may be arranged.

Section 2. **Time** The lunch hour shall not start before the fourth (4th) hour of work, to be completed by the sixth (6th) hour of work. On night work the dinner hour shall be taken between the fourth (4th) and completed by the sixth (6th) hour of work. No employee shall take less than one (1) hour for lunch unless mutually agreed upon by the Union and the Employer.

Section 3. **Work During Meal Period** Any employee who is ordered to work during any part of his assigned meal period shall be paid for the full meal period at the applicable overtime rate and shall further receive twenty (20) minutes to eat lunch, such twenty (20) minutes being credited as time worked.

Section 4. When a driver or driver-helper combination is or are taking his or their lunch period, no one will load and/or unload any freight on his or their truck during this period except at the home terminal or House Concern.

Section 5. **Coffee Breaks** It is understood the principle of a coffee break conforms with past practices in the industry. The coffee break will conform with Employer's rules and regulations. It is also understood that employees must not abuse this privilege.

ARTICLE 54 — Leased or Hired Equipment (Owner-Operators)

Section 1. For the purpose of protecting the established drivers' rate, minimum rental rates for the leasing of equipment owned by employee shall be determined by negotiations between the parties, in each locality, for the equipment used in that locality, subject to approval by the Joint Local and Joint Area Committees.

The minimum requirement rental rate shall produce the minimum cost of operating the equipment but in no event shall be less than seven dollars ($7.00) per hour. The equipment rental rate is in addition to the full drivers' wages and allowances including guarantees, health, welfare and pension contributions, vacation benefits, holidays and other fringe benefits.

The maximum number of local cartage owner-drivers which any Employer is permitted to utilize at each of its terminals within the area of this Agreement shall never exceed 5% of the total number of driver employees of said Employer at each terminal. As an owner-operator leaves the employ of an Employer under this Agreement the Employer shall replace the equipment of the owner-driver with company-owned equipment.

Section 2. In the event the Company leases equipment from individual owners, then in that event the Company shall pay the driver directly and separately from the lessor of said equipment.

Section 3. The Employer expressly reserves the right to control the manner, means and details of, and by which, the owner-operator performs his services, as well as the ends to be accomplished.

Section 4. Owner-drivers shall not be used until all available and appropriate equipment of the Employer is working. Whenever any owner-driver is engaged the Employer must, in compensating such owner-driver separate the payment for truck rental from the wages paid to him for personal services, so that the sum of money paid him for personal services is not less than what would be received by such owner-driver as wages in accordance with the wage rates set forth in Appendix A of this Agreement, as an employee of the Employer. Employer's time and pay records, relating to owner-drivers, shall be open for the inspection of Union representatives. Owner-drivers shall be covered by all provisions and receive all benefits provided for in this Agreement including, but not limited to, wages, health and welfare, pension, holidays, vacations and starting time and shall "punch-in" "punch-out" their own time cards at the Employer's terminal(s) or garage(s) and as provided in Article 52.

Section 5. The Employer shall maintain at each terminal a list of said owner-operators which shall include their seniority date.

Section 6. (a) All certificated or permitted carriers, hiring or leasing equipment owned and driven by the owner-driver shall file a true copy of the lease agreement covering the owner-driven equipment with the Joint Area Committee. The terms of the lease shall cover only the equipment owned and driven by the owner-driver and shall be in complete accord with the minimum rates and conditions provided herein plus the full wage rate and supplementary allowances for drivers as embodied elsewhere in this Agreement.

(b) The minimum rate for leased equipment owned and driven by the owner-driver shall be:

BEST COPY AVAILABLE

Local 807—Bohack 1973-1976 Collective Bargaining Agreement

Single axle tractor only

July 1, 1973	15.50¢ per mile
July 1, 1974	16.00¢ per mile
July 1, 1975	16.50¢ per mile

Tandem axle tractor only

July 1, 1973	16.00¢ per mile
July 1, 1974	16.50¢ per mile
July 1, 1975	17.00¢ per mile

Single axle trailer and 35 to 40 foot tandem trailer only (With $8.00 minimum daily guarantee)

July 1, 1973	5.25¢ per mile
July 1, 1975	5.5¢ per mile

Tandem axle, 40 foot or over, trailer only (With $10.00 minimum daily guarantee)

July 1, 1973	6.25¢ per mile
July 1, 1975	6.5¢ per mile

Minimum daily guarantee for trailers does not apply to Saturday, Sunday, or holidays. It applies to either the first day or last day of use, but not both. The above rates also apply to deadheading.

The above rates are based on twenty-three thousand (23,000) pounds load limit for single axle tractors and twenty-seven thousand (27,000) pounds load limit for tandem axle tractors.

On load limits over twenty-three thousand (23,000) pounds, there shall be ½¢ additional per mile for each one thousand (1,000) pounds or fraction thereof in excess of twenty-three thousand (23,000) pounds.

There shall be a minimum guarantee of twenty-five thousand (25,000) pounds for

leased single axle tractors and twenty-seven thousand (27,000) pounds for leased tandem axle tractors owned and driven by the owner-driver. During the first year of a lease, there shall be a minimum guarantee of $100 a month for rental of single axle tractors unless the lease is terminated by mutual agreement or for just cause (which does not include layoff). There shall be an offset against such minimum monthly guarantee to the extent that rental income exceeds the minimum mileage rental revenue provided herein, and to the extent of other for-hire rental revenue during periods of layoff. The carrier may, at its option, provide a minimum guarantee of twenty-six thousand (26,000) pounds for single axle tractors in lieu of the minimum monthly guarantee provided herein.

Nothing herein shall apply to leased equipment not owned by the driver. The minimum rates set forth above result from the joint determination of the parties that such rates represent only the actual cost of operating such equipment. The parties have not attempted to negotiate a profit for the owner-driver.

ARTICLE 55 — Travel Time and Expenses

Any employee working under this contract who is required to spend the night away from home shall be paid for all hours he works and shall, in addition, be compensated for all authorized expenses while away from home.

ARTICLE 56 — Vacations

Section 1. **Qualifying Period**

The qualifying period for the 1974 vacation shall be April 1, 1973 to March 31, 1974. The qualifying period for the 1975 vacation shall be April 1, 1974 to March 31, 1975. The qualifying period for the 1976 vacation shall be April 1, 1975 to March 31, 1976.

Section 2. **Time Credited**

In determining vacation entitlements, all calendar days paid for, including but not limited to paid holidays, and paid vacation days, as set forth below shall be counted as days worked, as well as all days lost by an employee while receiving benefits under Workmen's Compensation, if he otherwise would have had work opportunity with his Employer. In no case, however, shall an employee be entitled to vacation unless he works at least thirty (30) days in the qualifying period. If during any week an employee is unable to work a full week because of Federal or State regulations, he shall be credited with a full week's work.

For vacation eligibility purposes paid vacation days shall be considered as days worked according to the following schedule.

Employees who have celebrated their third anniversary by September 30—up to and including five days;

Employees who have celebrated their tenth anniversary by September 30—up to and including ten days;

Employees who have celebrated their fifteenth anniversary by September 30—up to and including fifteen days.

Seniority retained in the event of a transfer, merger, acquisition, purchase or sale, pursuant to Article 1, Section 3, or Article 5, Section 6, shall be computed in determining years of seniority for the purpose of Section 3 below.

Section 3. All employees covered by this Agreement shall receive vacation each year, according to the following schedule:

30 days	1 day
60 days	2 days
90 days	3 days
120 days	4 days
125 days	5 days
135 days	6 days
145 days	7 days
155 days	8 days
175 days	10 days
187 days	11 days
199 days	12 days
211 days	13 days
223 days	14 days
235 days	15 days

All employees with fifteen (15) years or more of seniority shall receive an additional week's vacation with pay at the rate paid for other vacation weeks. The anniversary date for the additional week's vacation shall be September 30th.

All employees with twenty (20) years or more of seniority shall receive an additional week's vacation with pay at the rate paid for other vacation weeks. The anniversary date for the additional week's vacation shall be September 30th.

Where there is a greater vacation schedule in effect at present than set forth above in this Section, such schedule shall continue.

An additional hour's pay shall be given to each employee for each credited day of vacation earned, up to a maximum:

Effective July 1, 1973
one year—five hours
two years—ten hours
ten years—fifteen hours
fifteen years—twenty hours

Effective July 1, 1974
one year—five hours
two years—ten hours
ten years—fifteen hours
fifteen years—twenty hours

Effective July 1, 1975
one year—five hours
two years—ten hours
ten years—fifteen hours
fifteen years—twenty hours

The anniversary date determining the years of service shall be September 30.

Section 4. **Vacation Pay**

(a) The pay of all employees shall be computed on the basis of wage classification in which the employee was paid for the majority of days during the qualifying period. All wage differentials shall be included in computing vacation pay.

(b) Vacation pay shall be paid in advance at the effective rate of pay prevailing when vacation is taken.

(c) If any of the holidays named in Article 57 of this Agreement occurs during an employee's vacation period, he shall have the choice of an extra day's vacation with pay, or an additional days' pay in lieu of the holiday.

(d) In case of death of an employee who is eligible for a vacation, vacation pay due such an employee shall be paid to the employee's estate.

(e) The Employer shall not make unavailable to an employee in selecting his vacation, any week within which a holiday falls during the vacation period.

Section 5. **Vacation Period**

(a) The period beginning April 15 and ending October 15, shall constitute the regular vacation period. Vacations may be taken before or after the regular vacation period by mutual agreement between the Employer and the employee.

(b) The vacation period of each qualified employee shall be set with due regard to the desire, seniority and preference of the employees consistent with the efficient operation of the Employer's business. Preference as to vacation period shall be given to the senior men.

(c) All vacations earned must be taken by the employees, and no employee shall be entitled to vacation pay in lieu of vacation, unless by mutual agreement of the Union and the Employer. Vacations may be taken outside of the regular vacation period provided, however, the Employer may not exclude weeks in which a holiday(s) falls.

Section 6. **Posting of Schedule**

The Employer shall post the vacation schedule no later than April 1st of each year.

ARTICLE 57 – Holidays

Section 1. **Recognized Holidays**

The following shall be recognized as paid holidays under this Agreement: New Year's Day, Lincoln's Birthday, Washington's Birthday, Good Friday, Decoration Day, Independence Day, Labor Day, Columbus Day, Election Day, Armistice (Veterans) Day, Thanksgiving Day, Christmas Day, and any holiday called for by State law or proclamation. Effective during the third year of this Agreement, one (1) holiday shall be added.

Section 2. **Pay if Not Worked**

(a) Any employee covered by this Agreement with one year or more seniority who was not ordered for work on a holiday shall nevertheless be guaranteed the above holidays provided such employee makes himself available for work a minimum of three (3) days during the calendar week in which the holiday occurs.

(b) Any employee covered by this Agreement with less than one year seniority who works three (3) days in any calendar week during which one of the above listed holidays occur, but who was not ordered to work on the holiday shall nevertheless receive one (1) day's pay for the holiday.

(c) These provisions shall also apply if a holiday falls on a Saturday. If during any holiday week an employee is unable to work a day because of federal or state regulations, he shall be credited with one (1) full day.

Section 3. **Pay if Worked**

All provisions of Article 52, Section 2(b) of this Agreement, with respect to holiday pay shall apply to work performed on any of the recognized holidays.

Section 4. **Holidays Occurring on Sunday**

When any of the recognized holidays occur on Sunday, and are celebrated any day before or after the holiday Sunday, such days shall be considered as the holiday and paid for as such.

ARTICLE 58 – Health, Welfare & Pension

Section 1.

The Employer hereby agrees to contribute to the appropriate health, welfare and pension funds for those Local Unions in the Jurisdiction of Teamsters Joint Council No. 16 and Teamsters Joint Council No. 73, the following amount per hour in accordance with the provisions outlined in Schedule "B" attached to this Agreement and by reference made a part thereto:

Effective 7/1/73	$1.15
Effective 7/1/74	$1.27½
Effective 7/1/75	$1.40

In the jurisdiction of Local Unions 478 and 701, the Employer hereby agrees to increase the contributions to the appropriate Local Union health, welfare and pension funds in the following amount per hour in accordance with the provisions outlined in Schedule "B" and by reference made a part thereto:

Effective 7/1/73	15¢
Effective 7/1/74	12½¢
Effective 7/1/75	12½¢

Section 2.

In the event of a delinquency in payment the Employer agrees to abide by all rules and regulations established by the Trustees of such funds, including but not to those requiring the payment interest not exceeding 10% of the delinquency and counsel fees and other costs of collection of such delinquencies, and to give security in sufficient amount as demanded by the Trustees to secure payment of such delinquencies.

Notwithstanding anything herein contained, it is agreed that in the event any Employer is delinquent at the end of a period in the payment of his contributions to the health and welfare or pension fund or funds created under this contract, in accordance with the rules and regulations of the Trustees of such funds, the employees of their representatives, after the proper official of the Local Union shall have given seventy-two (72) hours' notice to the Employer except where no notice is required in accordance with past practice of such delinquency in health and welfare and pension payments, shall have the right to take such action as they deem necessary, including the right to strike, until such delinquent payments are made, and it is further agreed that in the event such action is taken, the Employer shall be responsible to the employees for losses resulting therefrom. The present practice in regard to payment of health, welfare and pension from surplus funds for sickness and injury shall be maintained at no less than the present minimum.

Section 3. Contributions by the Employers into health, welfare, and pension funds for casuals and extra employees shall be continued in accordance with past practice.

Section 4. There shall be no deductions from equipment rental of owner-operators by virtue of the contribution made to the health

and welfare fund and pension fund regardless of whether the equipment rental is at the minimum rate or more and regardless of the manner of computation of owner-operator's compensation.

Section 5. The Employer hereby agrees to permit an authorized representative of the respective Local Union's Fund(s) to inspect its payroll records for the purpose of checking the accuracy of the contributions required to be made by the Employer to said fund(s). If the Employer fails to make the contributions provided for herein within the time required by the trust indenture and the rules and regulations of the fund(s) then the Trustees may cancel out the insurance coverage for such employees on whose account the Employer has failed to contribute.

Section 6. All contributing employers must use the reporting forms required by the Trustees of each fund and comply with said instructions of the Trustees in filling out such forms.

ARTICLE 59 — Posting of Bonds

All Local Unions may require the posting of a bond sufficient to cover weekly wages and fringe benefits for those Employers who by financial shortages have created a doubt as to future ability of the Union to collect for its members those conditions provided by the contract. Maintenance of Standards shall prevail for better conditions. Any dispute arising under this paragraph shall be submitted to the grievance procedure.

ARTICLE 60 — Loss or Damage

Employees are to use utmost care at all times to prevent loss or damage of freight. Where loss or damage of freight occurs through negligence of the employee, he shall be held responsible for same where it is proven that said damage occurred through his negligence or carelessness. Disputes arising over this paragraph shall be referred to the grievance procedure as provided in Article 46 of this Agreement, but pending the outcome of such grievance, the Employer shall not fix the amount of such damage and/or loss nor shall the Employer attempt to deduct from the employee's wages any money for the alleged damage and/or loss. No employee shall be charged for loss or damage to equipment.

ARTICLE 61 — Examination & Identification Fees

Section 1. (a) Physical, mental or other examinations required by any government body shall be promptly complied with by all employees, provided however, the Employer shall pay for all such examinations. The Employer shall not pay for any time spent in the case of applicants for jobs and shall be responsible to other employees only for time spent at the place of examination or examinations, where the time spent by the employee exceeds two (2) hours, and in that case, only for those hours in excess of two (2). Examinations are to be taken when required by any Government body unless the employee has suffered serious injury or illness. Employees will not be permitted to take examinations during their working hours unless instructed to do so by the Employer.

(b) The Employer reserves the right to select its own medical examiner or physician, and the Union may, if it believes an injustice has been done an employee have said employee re-examined at his own expense.

(c) The Employer shall not require that examinations be taken on Saturdays, Sundays or holidays.

Section 2.

Identification

Should the Employer find it necessary to require employees to carry or record full personal identification, such requirements shall be complied with by the employees, provided that the cost of such personal identification shall be borne by the Employer.

ARTICLE 62 — Equipment

Section 1. (a) Employees not required to operate

Defective Equipment

The Employer shall not require employees to take out on the streets or highways any vehicle that is not in safe operating condition or equipped with the safety appliances prescribed by law. It shall not be a violation of this Agreement where employees refuse to operate such equipment, unless such refusal is unjustified.

All equipment which is refused because not mechanically sound or properly equipped, shall be appropriately tagged so that it cannot be used by other drivers until the maintenance department has adjusted the complaint. After the equipment is repaired, the Employer shall place on such equipment an "OK" in a conspicuous place so the driver can see the same.

Under no circumstances will an employee be required or assigned to engage in any activity involving dangerous conditions of work or danger to person or property or in violation of any applicable statute or court order, or in violation of a government regulation relating to safety of person or equipment. The term "dangerous conditions of work" does not relate to the type of cargo which is hauled or handled.

(b) Reports

Employees shall immediately, or at the end of their shifts report all defects of equipment. Such reports shall be made on a suitable form furnished by the Employer, and shall be made in multiple copies, one copy to be retained by the employee. Such reports shall be made out on company time. The Employer shall not ask or require any employee to take out equipment that has been reported by any other employee as being in an unsafe operating condition until same has been approved as being safe by the mechanical department.

(c) If the Employer requests a regular employee to qualify on equipment requiring a special license or in the event an employee is required to qualify (recognizing in seniority) on such equipment in order to obtain a better job opportunity with his Employer, the Employer shall allow such regular employee the use of the equipment in order to take the examination consistent with the applicable State Motor Vehicle Laws and on the employee's time.

Section 2. Uniforms The Employer agrees that if any employee is required to wear any kind of uniform as a condition of his continued employment, such uniform shall be furnished and maintained by the Employer free of charge, at the standard required by the Employer. Terminal yardmen and hostlers shall be provided with rain gear. Any employee physically handling in substantial quantities hides, creosoted items, spun glass, lamp black, barbed wire, and acids, shall be provided with rubber or leather aprons and gloves.

Section 3. Winter Safety Equipment The Employer shall install heaters and defrosters on all trucks and tractors.

ARTICLE 63 — Accidents, Safety Violations, Etc.

Section 1. Accidents (a) Reports.

Any employee involved in any accident shall immediately report said accident and any physical injury sustained. When required by his Employer, the employee, before going off duty and before starting his next shift, shall make out an accident report in writing on forms furnished by the Employer and shall turn in all available names and addresses of witnesses to the accident. Such reports shall be made out on company time. Failure to comply with this provision shall subject such employee to disciplinary action by the Employer.

(b) Costs, Bond, Counsel, etc.

When an employee is required to appear in any court for the purpose of testifying because of any accident he may have been involved in during working hours, such employee shall be reimbursed in full by the Employer for all earning opportunity lost because of such appearance. The Employer shall furnish employees who are involved in accidents during working hours with bail bond and legal counsel and shall pay in full for same. Said bail bond and legal counsel shall remain assigned to the employee until all legal action in connection with said accident is concluded, provided the employee is not charged and convicted of criminal negligence. This subsection (b) shall not apply to employees who are found guilty of drunken driving when involved in an accident during working hours. The Employer shall assume all responsibility for all court costs, legal fees, and bail bond fees for any employee who is involved in any accident or accidents during working hours and shall assume all responsibility for all judgements and awards against an employee who is involved in accidents during working hours, which result through court action against said employee, except as provided above.

ARTICLE 64 — Sanitary Conditions

Garages or terminals of the Employers must provide sanitary conditions for employees covered by this Agreement. The Employer must furnish toilet facilities, hot and cold running water, and soap.

ARTICLE 65 — Inspection of Payroll Records

An authorized representative of the Union and Committee shall have the

right to inspect the Employer's pay records, time cards, health and welfare and pension fund records and/or other records of the employees.

ARTICLE 66 — Road or Long Line Operations

Employees of the Employer who are engaged in road or long line operations as distinguished from the Local Pick-up and Delivery operations covered by this contract shall be covered by all terms of this Agreement excepting the wage rates and methods of payment. With respect to wage rates and methods of payment, they shall be paid in accordance with the prevailing union contract in the areas into and out of which they operate for Employer, providing, however at no time shall they receive less than the hourly rate provided in this contract for the type work covered by this contract. In regard to Health, Welfare, Pension, Vacations and Holidays, this provision shall not apply where there are established rates for the road operation. Past practices shall prevail and increases be granted accordingly.

ARTICLE 67 — Company Rules

The Employer may establish such company rules as he deems necessary or desirable, provided that such rules are not in conflict with the terms and provisions of this Agreement, and further provided that no such company rules shall become effective without written approval of the Local Union. Any controversy between

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JOB CL

Tractor Trailer Drivers
Tandem Equipment
and Switchers

Straight Truck Drivers

Motorized Lift Truck
Operators

Checkers

Loc

Straight Truck Drivers

Motorized Lift Truck
Operators

Checkers

Platform Men

Helpers

Warehousemen

APPENDIX "A"

JOB CLASSIFICATIONS & WAGE RATES

Locals 816 and 282

Day Rate

	Eff. Date	Hourly Rate	Daily Rate	Weekly Rate	Time & one-half	Double Time
tor Trailer Drivers	7/1/73	6.31	50.48	252.40	9.465	12.62
ndem Equipment	7/1/74	6.61	52.88	264.10	9.915	13.22
and Switchers	7/1/75	6.91	55.28	276.40	10.365	13.82
ght Truck Drivers	7/1/73	6.21	49.68	248.40	9.315	12.42
	7/1/74	6.51	52.08	260.40	9.765	13.02
	7/1/75	6.81	54.48	272.40	10.215	13.62
rized Lift Truck erators	7/1/73	6.00	48.00	240.00	9.00	12.00
	7/1/74	6.30	50.40	252.00	9.45	12.60
	7/1/75	6.60	52.80	264.00	9.90	13.20
kers	7/1/73	5.873	46.984	234.92	8.8095	11.746
	7/1/74	6.173	49.384	246.92	9.2595	12.346
	7/1/75	6.743	51.784	258.92	9.7095	12.946

Locals 816 and 282—(Continued)

Night Rate

	Eff. Date	Hourly Rate	Rate Daily	Weekly Rate	Time & one-half	Double Time
ght Truck Drivers	7/1/73	6.335	50.68	253.40	9.5025	12.670
	7/1/74	6.635	53.08	265.40	9.9525	13.270
	7/1/75	6.935	55.48	277.40	10.2525	13.870
rized Lift Truck erators	7/1/73	6.125	49.00	245.00	9.1875	12.250
	7/1/74	6.425	51.40	257.00	9.6375	12.850
	7/1/75	6.725	53.80	269.00	10.0875	13.450
kers	7/1/73	5.998	47.984	239.92	8.997	11.996
	7/1/74	6.298	50.384	251.92	9.447	12.596
	7/1/75	6.598	52.784	263.92	9.897	13.196
orm Men	7/1/73	5.998	47.984	239.92	8.997	11.996
	7/1/74	6.298	50.384	251.92	9.447	12.596
	7/1/75	6.598	52.784	263.92	9.897	13.196
ers	7/1/73	5.998	47.984	239.92	8.997	11.996
	7/1/74	6.298	50.384	251.92	9.447	12.596
	7/1/75	6.598	52.784	263.92	9.897	13.196
ehousemen	7/1/73	5.998	47.984	239.92	8.997	11.996
	7/1/74	6.298	50.384	251.92	9.447	12.596
	7/1/75	6.598	52.784	263.92	9.897	13.196

Locals 816 and 282—(Continued)

Day Rate

	Eff. Date	Hourly Rate	Daily Rate	Weekly Rate	Time & one-half	Double Time
Platform Men	7/1/73	5.873	46.984	234.92	8.8095	11.746
	7/1/74	6.173	49.384	246.92	9.2595	12.346
	7/1/75	6.473	51.784	258.92	9.7095	12.946
Helpers	7/1/73	5.873	46.984	234.92	8.8095	11.746
	7/1/74	6.173	49.384	246.92	9.2595	12.346
	7/1/75	6.473	51.784	258.92	9.7095	12.946
Warehousemen	7/1/73	5.873	46.984	234.92	8.8095	11.746
	7/1/74	6.173	49.384	246.92	9.2595	12.346
	7/1/75	6.473	51.784	258.92	9.7095	12.946

APPENDIX "A"

JOB CLASSIFICATIONS & WAGE RATES

Locals 816 and 282

Night Rate

	Eff. Date	Hourly Rate	Daily Rate	Weekly Rate	Time & one-half	Double Time
Tractor Trailer Drivers	7/1/73	6.435	51.480	257.40	9.6525	12.870
	7/1/74	6.735	53.880	269.40	10.1025	13.470
	7/1/75	7.035	56.280	281.40	10.5525	14.070

54a

Local 807—Bohack 1973-1976 Collective Bargaining Agreement

APPENDIX "A"

JOB CLASSIFICATIONS & WAGE RATES

Locals 240, 445, 469, 560, 617, 641, 660, 707, 805 and 806

	Eff. Date	Hourly Rate	Daily Rate	Weekly Rate	Time & one-half	Double Time
Tractor Trailer Drivers Tandem Equipment and Switchers	7/1/73	6.31	50.48	252.40	9.465	12.62
	7/1/74	6.61	52.88	264.10	9.915	13.22
	7/1/75	6.91	55.28	276.40	10.365	13.82
Straight Truck Drivers	7/1/73	6.21	49.68	248.40	9.315	12.42
	7/1/74	6.51	52.08	260.40	9.765	13.02
	7/1/75	6.81	54.48	272.40	10.215	13.62
Motorized Lift Truck Operators	7/1/73	6.00	48.00	240.00	9.00	12.00
	7/1/74	6.30	50.40	252.00	9.45	12.60
	7/1/75	6.60	52.80	264.00	9.90	13.20
Checkers, Platform Men Helpers & Warehousemen	7/1/73	5.87	46.96	234.80	8.805	11.74
	7/1/74	6.17	49.36	246.80	9.255	12.34
	7/1/75	6.47	51.76	258.80	9.705	12.94

APPENDIX "A"

JOB CLASSIFICATIONS & WAGE RATES

Local 701

	Eff. Date	Hourly Rate	Daily Rate	Weekly Rate	Time & one-half	Double Time
Tractor Trailer Drivers Tandem Equipment and Switchers	7/1/73	6.25	50.00	250.00	9.375	12.50
	7/1/74	6.55	52.40	262.00	9.825	13.10
	7/1/75	6.85	54.80	274.00	10.275	13.70
Straight Truck Drivers	7/1/73	6.15	49.20	246.00	9.225	12.30
	7/1/74	6.45	51.60	258.00	9.675	12.90
	7/1/75	6.75	54.00	270.00	10.125	13.50
Motorized Lift Truck Operators (Hi-Lo)	7/1/73	5.94	47.52	237.60	8.91	11.88
	7/1/74	6.24	49.92	249.60	9.36	12.48
	7/1/75	6.54	52.32	261.60	9.81	13.08
Checkers	7/1/73	5.81	46.48	232.40	8.715	11.62
	7/1/74	6.11	48.88	244.40	9.165	12.22
	7/1/75	6.41	51.28	256.40	9.615	12.82
Utility Platform Men	7/1/73	5.88	47.04	235.20	8.82	11.76
	7/1/74	6.18	49.44	247.20	9.27	12.36
	7/1/75	6.48	51.84	259.20	9.72	12.96
Platform Men, Helpers, Warehousemen	7/1/73	5.81	46.48	232.40	8.715	11.62
	7/1/74	6.11	48.88	244.40	9.165	12.22
	7/1/75	6.41	51.28	256.40	9.615	12.82

N.J.-N.Y. Sup.

APPENDIX "A"

JOB CLASSIFICATIONS & WAGE RATES

Local 807

Day Rate

	Eff. Date	Hourly Rate	Wage Per Day (Mon.-Fri.)	Wage 5 days (Mon.-Fri.)	Overtime Per Hour
Tractor Trailer Drivers	7/1/73	6.31	50.48	252.40	9.465
	7/1/74	6.61	52.88	264.40	9.915
	7/1/75	6.91	55.28	276.40	10.365
Straight Truck Drivers	7/1/73	6.21	49.68	248.40	9.315
	7/1/74	6.51	52.08	260.40	9.765
	7/1/75	6.81	54.48	272.40	10.215
Hi-Lo Operators	7/1/73	6.00	48.00	240.00	9.00
	7/1/74	6.30	50.40	252.00	9.45
	7/1/75	6.60	52.80	264.00	9.90
Helpers, Platform Men, Checkers & Warehousemen	7/1/73	5.875	47.00	235.00	8.8125
	7/1/74	6.175	49.40	247.00	9.2625
	7/1/75	6.475	51.80	259.00	9.7125

APPENDIX "A"

JOB CLASSIFICATIONS & WAGE RATES

Local 807

Night Rate

	Eff. Date	Hourly Rate	Wage Per Day (Mon.-Fri.)	Wage 5 days (Mon.-Fri.)	Overtime Per Hour
Tractor Trailer Drivers	7/1/73	6.435	51.480	257.40	9.6525
	7/1/74	6.735	53.880	269.40	10.1025
	7/1/75	7.035	56.280	281.40	10.5525
Straight Truck Drivers	7/1/73	6.335	50.68	253.40	9.5025
	7/1/74	6.635	53.08	265.40	9.9525
	7/1/75	6.935	55.48	277.40	10.2525
Hi-Lo Operators	7/1/73	6.125	49.00	245.00	9.1875
	7/1/74	6.425	51.40	257.00	9.6375
	7/1/75	6.725	53.80	269.00	10.0875
Helpers, Platform Men Checkers & Warehousemen	7/1/73	6.00	48.00	240.00	9.00
	7/1/74	6.30	50.40	252.00	9.45
	7/1/75	6.60	52.80	264.00	9.90

Local 807—Bohack 1973-1976 Collective Bargaining Agreement

IN WITNESS WHEREOF the parties hereto have set their hands and seals this .... day of ...., 1973, to be effective as of July 1, 1973, except as to those areas where it has been otherwise agreed between the parties.

NEGOTIATING COMMITTEE

For the Employees:

NATIONAL OVER-THE-ROAD AND CITY CARTAGE POLICY NEGOTIATING COMMITTEE

Frank E. Fitzsimmons
(Chairman)

- Murray W. Miller
- Robert Holmes
- Weldon L. Mathis
- William J. McCarthy
- George E. Mock
- Einar O. Mohn
- Joseph Morgan
- Edward Nangle
- William Presser
- Salvatore Provenzano
- Ray Schoessling
- Joseph Trerotola
- Arnie Weinmeister
- Roy Williams
- Walter J. Shea
- Elvin E. Hughes
- Robert T. Flynn
- Walter W. Teague
- Howard Jones
- Verne Milton
- Robert Rampy
- Al Weiss

NEW JERSEY—NEW YORK UNION NEGOTIATING COMMITTEE

Richard C. Bell, Chairman
James Geoghegan, Local 282
Theodore Daley, Local 445
William Johnson, Local 469
Joseph P. Uzzolino, Local 478
Salvatore Provenzano, Local 560
William Farrell, Local 617

Lawrence McDermott, Local 641
Robert Coar, Local 701
Louis Alimena, Local 707
Abe Gordon, Local 805
George Snyder, Local 806
Joseph Mangan, Local 807
Lester Connell, Local 816

For the Employers:

TRUCKING EMPLOYERS, INC.

C. G. Zwingle
(Chairman)

- Arthur E. Imperatore
- Vincent R. Dagen
- E. W. Swan
- Rudy Pulliam
- Robert F. Todd
- John A. Murphy
- Charles J. Lawlor
- R. S. McIlvennan

NEW JERSEY-NEW YORK EMPLOYER NEGOTIATING COMMITTEE

- Frank Scotto, Chairman
- Joe Adams
- Louis Brenner
- Clarence Frankel
- Robert Kortenhaus
- Wallace O'Reilly
- Frank Wolf
- Leo Smith
- Martin Michaels
- James McHugh

IN WITNESS HEREOF the undersigned do duly execute The National Master Agreement and Supplemental Agreement (and Riders, if any) set forth herein.

FOR THE UNION

LOCAL UNION No. [illegible], affiliate of International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

By ....
(Signed)

Its ....
(Title)

FOR THE COMPANY

THE BOHACK CORP.
(Company)

By ....
(Signed)

Its Exec-V.P.- Administrator
(Title)

Home Office Address:

48-25 Metropolitan Ave.
(Street)

Brooklyn New York
(City) (State)

6/5/74
(Date Signed)

This Agreement is approved as to form only by the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and in doing so the International Union assumes no liability whatsoever under this Agreement for the performance thereof or otherwise, and by such approval does not become a party to the Agreement.

APPROVED:

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

FRANK E. FITZSIMMONS
General President

May 16, 1975 Grievance Award

NEW YORK CITY JOINT LOCAL COMMITTEE
Locals 282-707-807 and 816
111 4th Avenue
New York, N. Y. 10003
674-4141

CERTIFIED
R. R. R.

May 16, 1975

Mr. Joseph Binder
The Bohack Corporation
48-25 Metropolitan Avenue
Brooklyn, N. Y. 11237

Re: Case No. EM-574
Local 807 vs Bohack Corporation
Violation Art. 32, Sec. 1 Para. 2
of the Rider Agreement

Dear Mr. Binder:

The above dispute was heard by the New York City Joint Local Committee Emergency Meeting held in the offices of New York State Motor Truck Association on Monday, May 12, 1975, all appearing parties testified and were heard.

The Committee in executive session ruled that:

"Based on the evidence and testimony presented in this instant case - The Committee is constraint and has no alternative but to rule the Company is in violation of Article 32. Accordingly, the Company is ordered to cease and desist, forthwith, from having its bargaining unit work subcontracted out which is violative of said Article."

Attached is a bill in the amount of $25.00 covering the hearing of this case.

Very truly yours,

Frank Scotto
Employer Co-Chairman

FS:mr

cc: John Hohmann - Local 807

Notice of Grievance Dated June 17, 1975

New York City Joint Local Committee

DATE RECEIVED ....
CASE NO. ....
FOR COMMITTEES' USE ONLY
DATE CASE HEARD ....

PRE-HEARING INFORMATION

In order that the Committee Members may be familiar with the important features in this case, will you kindly fill out the following form as completely as possible. The information submitted herein will be treated as a preliminary general statement of your position.*

1. Union Name Truck Drivers Local Union No. 807, I.B.T.
Address 32-43 49th Street, Long Island City, New York 11103
2. Name of Agent handling particular grievance John Hohmann
3. A. Name of Employee filing complaint N/A
B. Classification of Work Truck Drivers
C. Date of Employment ....
4. Name and Address of Carrier involved The Bohack Corporation
48-25 Metropolitan Avenue, Brooklyn, New York 11237
5. Circumstances of the Dispute (Check one) ....
A. Warning Notice .... C. Discharge ....
B. Disciplinary time off .... D. Back pay claim X
E. Others Health and pension claims
6. Date on which company ~~took action against employee~~ failed to take action pursuant to an arbitration award. 5/21/75
7. Indicate that part of contract which you claim was violated
Article 33,51,56,57,58
8. Date on which alleged violation took place 5/21/75
9. Date on which grievance was first taken up with management N/A
10. Exact amount of back pay, if any, claimed by aggrieved employee $43,330.56 (see attached schedule)
Health $3,207.68, Pension $5,013.32
11. Your Position (Also include brief resume of pertinent facts — use back of sheet if necessary)

The New York City Joint Local Committee rendered an award dated May 16, 1975 directing The Bohack Corporation to cease and desist from subcontracting out work performed by the drivers in violation of Article 32. The Employer has failed to comply with this award and, thereby, has prevented the bargaining unit employees from receiving the wages, differentials, holidays, health and pension benefits, vacation credit and other terms and conditions set forth in their collective bargaining agreement.

*PREPARE FOUR COPIES

1st Copy — Mail to Union Co-Secretary
2nd Copy — Mail to Employer Co-Secretary
3rd Copy — Mail to Company Involved

For the Party filing grievance

DATE: June 17, 1975

Notice of Grievance Dated June 17, 1975

Rate 53 76 per day   31 men a day   Exhibit "C-1"

	KRASDALE ⑥ MEN	ROYAL FOODS ⑥ MEN	DIETCH
MAY 21	$322.56	$322.56	$1021.44
22	$322 56	$322.56	$102144
23	$322 56	$322.56	$102144
Hol May 26	$322.56	$322.56	$1021.44
27	$32256	$322.56	$102144
28	$322.56	$322.56	$102144
29	$32256	$322.56	$1021.44
30	$322.56	$32256	$1021.44
JUNE 2	$32256	$322.56	$1021.44
3	32256	322.56	102144
4	322.56	322.56	1021.44
5	322.56	322.56	102144
6	322 56	32256	102144
JUNE 9	$322.56	$322.56	$1021.44
10	3.22 56	322.56	102144
11	322 56	3.22.56	102144
12	322.56	322.56	1021.44
13	322 56	322.56	1021 44
JUNE 16	$322.56	$322.56	$102144
17	32256	322 56	102144
18	32256	32256	102144
19	32256	32256	102144
20	32256		
JUNE 23	$32256	$32256	$102144
24	32256	322.56	102144
25	322.56	322.56	1021.44
	8,386.56	8.38656	26557^{44}

Plus W+P for All DAYS

Welfare Fund - $3,267.88 - Pension Fund - $$5,013^{32}$

Order to Show Cause Why Bohack Should not Be Permitted to Reject its Labor Agreement

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
--------------------------------x

In the Matter

of

THE BOHACK CORPORATION,

Debtor.

--------------------------------x

ORDER TO SHOW CAUSE

74 B 933

Upon the annexed application of the debtor dated July 17 1975, and the contract annexed thereto, let TRUCK DRIVERS UNION LOCAL 807, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, show cause before this Court at the United States Courthouse, Eastern District of New York, Bankruptcy Division, 90-04 161st Street, Jamaica, New York on the 25 day of July, 1975, at 9:30 A.M. or as soon thereafter as counsel can be heard, why the Debtor in Possession should not be permitted to reject the executory contract appended to annexed application, between the debtor and the union, and it is

ORDERED, that a copy of this order together with the application upon which it is granted be served upon any officer of TRUCK DRIVERS UNION LOCAL 807, INTERNATIONAL BROTHERHOOD OF TEAMSTERS and the attorneys for the Creditors Committee on or before July 22, 1975.

Dated: Jamaica, New York
July 18, 1975

C. ALBERT PARENTE

C. ALBERT PARENTE
Bankruptcy Judge

Application for Rejection of Executory Contract

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
------------------------------x

In the Matter
of
THE BOHACK CORPORATION,
Debtor.

------------------------------x

APPLICATION FOR
REJECTION OF
EXECUTORY CONTRACT

74 B 933

TO THE HON. C. ALBERT PARENTE, BANKRUPTCY JUDGE:

The application of THE BOHACK CORPORATION, by KELLEY DRYE & WARREN, ESQS., and of J. STANLEY SHAW, ESQ., respectfully shows to the Court as follows:

1. That a petition for an arrangement under Chapter XI of the Bankruptcy Act was filed by the Debtor herein on July 30, 1974 and that applicant has continued in possession of its property by order of this Court dated July 30, 1974.

2. That as required by Rule 11-11 of the Chapter XI Rules, the Debtor's petition for an arrangement herein was accompanied by a statement of the Debtor's executory contracts, one of which was the contract between THE BOHACK CORPORATION and TRUCK DRIVERS UNION LOCAL 807, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (hereinafter referred to as Local 807).

3. Said contract was entered into on July 1, 1973 to run until June 30, 1976, and the applicant desires, in the best interests of the estate, permission of this Court to reject said executory contract.

4. The reason applicant seeks to reject said contract is that it is onerous and burdensome to the Debtor and substantial savings and potential profits can be realized and effected if such contract is rejected.

5. As part of its Plan of Arrangement, THE BOHACK CORPORATION is subleasing or selling portions of its terminal at Bohack Square and will deal directly with suppliers who will deliver to Bohack stores rather than a central warehouse.

6. The discontinuation of the warehousing operation is an integral part of the proposed plan in that the debtor can become profitable in its store operations, which operations have been greatly reduced since the filing of the original petition herein, if the costly warehouse and trucking operations now conducted by the debtor can be eliminated. Inasmuch as the wholesale suppliers whose agreements to sell to the debtor have been approved by this Court can deliver directly to the stores much more cheaply than the present utilization of Local 807 drivers, there is placed on the debtor a substantial cash flow drain which can be eliminated by rejection of the Local 807 contract, and concurrently, discontinuing the warehouse operation.

7. Additionally, the proposed plan of arrangement requires disposition of certain real property assets of the debtor, including portions of the terminal at Bohack Square. Rejection of this contract and the warehouse operation will allow the needed flexibility to carry out that part of the plan.

8. Unless the foregoing two goals can be achieved, no successful plan of arrangement can be made and fulfilled. Rejection of Local 807's contract is necessary to achieve those goals.

9. The savings and the potential profits will inure to the benefit of the general creditors of the estate of the Debtor and will make feasible the carrying out of the Plan of Arrangement which is now before the Creditors' Committee for final agreement before presentation for confirmation.

10. No prior application has been made for the relief sought herein.

WHEREFORE, applicant prays for an order rejecting the executory contract between the debtor and Local 807, dated July 1, 1973, and granting such other and further relief as to the Court may seem just and proper.

Dated: New York, New York
July 17, 1975

KELLEY, DRYE & WARREN
By: William C.
A Member of the Firm

Attorneys for Debtor
Office & P. O. Address:
350 Park Avenue
New York, New York 10022
(212) PL 2-5800

J. STANLEY SHAW, ESQ.

Co-Counsel for Debtor
Office & P. O. Address:
770 Lexington Avenue
New York, New York 10021
(212) 838 - 7127

Local 807—Bohack Rider to their 1973-1976 Collective Bargaining Agreement

RIDER AGREEMENT, made and entered into as of the first day of July, 1973 by and between TRUCK DRIVERS LOCAL UNION NO 807, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, with offices at 32-43 49th Street, Long Island City, New York 11103 (hereinafter referred to as "LOCAL 807"), and THE BOHACK CORPORATION

having its principal place of business at ……………………………………………

(hereinafter referred to as the "EMPLOYER").

WITNESSETH:

WHEREAS, LOCAL 807 and the EMPLOYER agree that their current collective bargaining agreement, covering the EMPLOYER'S subject employees, shall be comprised of the 1973-1976 NATIONAL MASTER FREIGHT AGREEMENT and the NEW JERSEY-NEW YORK AREA GENERAL TRUCKING SUPPLEMENTAL AGREEMENT, plus Schedule "B" (hereinafter collectively referred to as the "1973-1976 AREA-WIDE MASTER FREIGHT AGREEMENT") and this RIDER AGREEMENT.

NOW, THEREFORE, it is mutually agreed by and between LOCAL 807 and the EMPLOYER as follows:

1. That all terms, standards and conditions that existed in LOCAL 807's 1964-1967 General Trucking Agreement shall remain in effect and be incorporated as a part of the 1973-1976 AREA-WIDE MASTER FREIGHT AGREEMENT as if set forth at length herein, except as specifically changed, modified or amended by the terms and conditions of the 1973-1976 AREA-WIDE MASTER FREIGHT AGREEMENT. LOCAL 807 and the EMPLOYER shall be bound in all respects by said incorporated provisions.

2. (a) For the purpose of this Agreement the EMPLOYER agrees to refrain from using the services of any person who does not observe the wages, hours and conditions of employment set forth in 1973-1976 AREA-WIDE MASTER FREIGHT AGREEMENT.

(b) In all cases hired or leased equipment shall be operated by an employee of the EMPLOYER and such employee shall be paid pursuant to the terms of this Agreement. The EMPLOYER expressly reserves the right to control the means, manner and details of and by which the operator of said hired or leased equipment performs his services, as well as the ends to be accomplished.

(c) Where employees are hired through any employment agency, the EMPLOYER shall pay any and all charges. The EMPLOYER shall not enter into any other written or oral agreement with any employment agency which in any way violates the wages, hours and working conditions of this Agreement.

In the event the EMPLOYER violates these provisions LOCAL 807 shall be free to take economic action within twenty-four (24) hours notice not withstanding any other provisions contained in the 1973-1976 AREA-WIDE MASTER FREIGHT AGREEMENT.

3. Within thirty (30) working days after the hire of any new employee, the EMPLOYER shall notify LOCAL 807, in writing of the employee's name, address, date of hire and social security number, except where such new employee is an owner-operator or other operator of leased or hired equipment the notice shall be supplied within three (3) working days.

4. (a) All disputes between LOCAL 807 and the EMPLOYER relating to contributions to the Local 807 Labor-Management Health and Pension Funds shall be submitted by either party to the NEW YORK CITY TRUCKING AUTHORITY for final and binding arbitration.

Local 807—Bohack Rider to their 1973-1976 Collective Bargaining Agreement

5. The allocation of additional contributions to the Local 807 Labor-Management Health and Pension Funds, set forth in Schedule B and effective July 1, 1974 and July 1, 1975, as be[illegible] the Health Fund and Pension Fund shall be determined by LOCAL 807 in its sole discretion prior to the respective dates thereof. The EMPLOYER shall increase its contributions to each or both of said Funds in accordance with LOCAL 807's determination.

6. The 1973-1976 AREA-WIDE MASTER FREIGHT AGREEMENT provides that disputes between an EMPLOYER and LOCAL 807 relating to the discharge or proposed discharge of an employee covered by said Agreement may be submitted by either party to arbitration before the NEW YORK CITY TRUCKING AUTHORITY. EMPLOYERS failing to contribute to the support of the NEW YORK CITY TRUCKING AUTHORITY may be deprived of the right to submit disputes relating to discharges or proposed discharges to said Authority. In such event, LOCAL 807 shall have the right to order a work stoppage and any such work stoppage shall not be considered a breach of the 1973-1976 AREA-WIDE MASTER FREIGH AGREEMENT.

Should an EMPLOYER fail to pay his share of the cost of an arbitration proceeding in which said EMPLOYER was a participant, LOCAL 807 shall have the right to order a work stoppage and such work stoppage shall not be considered a breach of the 1973-1976 AREA-WIDE MASTER FREIGHT AGREEMENT.

7. That the wages, hours and other terms and conditions set forth in the 1973-1976 AREA-WIDE MASTER FREIGHT AGREEMENT shall become effective on and be retroactive to July 1, 1973.

8. This RIDER AGREEMENT shall be physically annexed to and made part of the 1973-1976 AREA-WIDE MASTER FREIGHT AGREEMENT for all purposes.

9. EMPLOYER contributions to the Local 807 Labor-Management Health and Pension Funds, on behalf of corporate officers or salaried employees, performing covered employment during a quarterly reporting period, shall be for a minimum of 520 hours for said quarter.

IN WITNESS WHEREOF, the parties hereto have affixied their signatures by their duly authorized officers and representatives as of the day and year first above written.

TRUCK DRIVERS LOCAL UNION NO. 807,
INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
CHAUFFEURS, WAREHOUSEMEN AND HELPERS
OF AMERICA

by____________________

EMPLOYER

by____________________

THE BOHACK CORPORATION
4825 METROPOLITAN AVENUE
BROOKLYN, NEW YORK 11237

Local 807's Notice to Bohack, Dated April 28, 1975, of Bohack's Violation of Paragraph #2 of the Rider to their Collective Bargaining Agreement

MGMNYAT HSB
2-025779E118002 04/28/75
ICS IPMMTZZ CSP
1 2127262525 MGM TDMT LONG ISLAND CITY NY 04-28 0210P EST
ZIP 11103

western union Mailgram

7

~~EXHIBIT "C-1~~ "

TRUCK DRIVERS LOCAL UNION 807 R HENRY
32-43 49 ST
LONG ISLAND CITY NY 11103

THIS MAILGRAM IS A CONFIRMATION COPY OF THE FOLLOWING MESSAGE:

2127262525 TDMT LONG ISLAND CITY NY 35 04-28 0210P EST
FON 2125551212
THE BOHACK CORP, DUPLICATE
48-25 METROPOLITAN AVE
BROOKLYN NY 11237
AS A RESULT OF YOUR VIOLATION OF PARAGRAPH 2 OF THE RIDER AGREEMENT BETWEEN LOCAL 807 AND THE BOHACK CORP YOU ARE HEREBY BEING PROVIDED WITH THE 24 HOUR NOTICE CALLED FOR IN THAT PARAGRAPH
JOSEPH F MANGAN, PRESIDENT LOCAL 807

14:10 EST

MGMNYAT HSB

Local 807's Notice to Bohack, Dated May 5, 1975, of Bohack's Violation of Paragraph #2 of the Rider to their Collective Bargaining Agreement

western union Mailgram

UNITED STATES POSTAL SERVICE

MGMNYAT HSB
2-020780E125002 05/05/75
ICS IPMMTZZ CSP
1 2127262525 MGM TDMT LONG ISLAND CITY NY 05-05 1250P EST
ZIP 11103

8

EXHIBIT "G-2"

TRUCK DRIVERS LOCAL UNION 807
32-43 49TH ST
LONG ISLAND CITY NY 11103

THIS MAILGRAM IS A CONFIRMATION COPY OF THE FOLLOWING MESSAGE:

2127262525 TDMT LONG ISLAND CITY NY 42 05-05 1250P EST
PMS JOSEPH BINDER, FONE
BOHACK CORP 48-25 METROPOLITAN AVE
BROOKLYN NY 11237

AS A RESULT OF YOUR VIOLATION OF PARAGRAPH TWO OF THE RIDER AGREEMENT BETWEEN LOCAL 807 AND THE BOHACK CORP, AS OF MAY 5 1975 YOU ARE HEREBY BEING PROVIDED WITH A 24 HOUR NOTICE CALLED FOR IN THAT PARAGRAPH

JOSEPH F MANGAN PRESIDENT LOCAL 807

12:50 EST

MGMNYAT HSB

Local 807's Complaint to Compel Arbitration

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

TRUCK DRIVERS LOCAL UNION NO. 807,
INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN
AND HELPERS OF AMERICA,

Plaintiff,

-against-

THE BOHACK CORPORATION,

Defendant.

COMPLAINT

75C 1131

The plaintiff by its attorney, J. Warren Mangan, complaining of the defendant and requesting equitable relief, alleges as follows:

1. This is an action for specific performance of the labor agreement between the parties hereto. Jurisdiction is conferred upon this Court by Section 301(a) of the Labor-Management Relations Act, 29 U.S.C. 185(a).

2. The plaintiff is a labor organization as defined in Section 2, Sub-section (5), of the Labor Management Relations Act, 29 U.S.C. 152(5) and has its principal place of business at 32-43 49th Street, Long Island City, New York.

3. That at all times material hereto defendant was and continues to be a corporation existing under and by virtue of the law of the State of New York and maintains its office and principal place of business at 48-25 Metropolitan Avenue, Brooklyn, New York.

4. Defendant is a Debtor in Possession, having filed its original petition pursuant to Chapter XI of the Bankruptcy Act, 11 U.S.C. 701, et seq. , on July 30, 1974.

5. Until December 16, 1974, truck drivers employed by defendant and represented by plaintiff, pursuant to a labor

agreement with a commencement date of July 1, 1973 and an expiration date of March 31, 1976, made all deliveries of groceries, produce, dairy, meat and bakery to defendant retail stores.

6. On December 16, 1974 and at various times thereafter the defendant has subcontracted that work that was formerly performed by its truck drivers to other persons and thereby substantially reduced work opportunity for its truck driver employees.

7. On December 16, 1974 plaintiff commenced an arbitration proceeding against plaintiff, seeking the return of the aforementioned subcontracted work, in accordance with the terms and conditions of their collective bargaining agreement. See Exhibit "A" annexed hereto.

8. On May 16, 1975 an arbitration award was rendered, which held that the defendant violated Article 32 of the aforementioned collective bargaining agreement and ordered defendant to "cease and desist, forthwith, from having its bargaining unit work subcontracted out..." See Exhibit "B" annexed hereto.

9. On or about May 27, 1975 plaintiff moved to confirm the May 16, 1975 award in a proceeding instituted in the Supreme Court of the State of New York, County of Queens. On or about June 5, 1975 defendant removed that proceeding from the State Court to this Court. The motion for confirmation of said award has not as yet been heard by this Court.

10. On July 16, 1975 the defendant obtained a preliminary injunction from Bankruptcy Judge C. Albert Parente enjoining the plaintiff, and other non-appearing persons "from conducting a strike, walkout, work stoppage, or establishing a picket line at [defendant's] various places of business or at the premises of any other party or person doing business with [defendant] during the pendency of this action." Plaintiff is currently

appealing this order and is before this Court seeking a stay and suspending said order pending the appeal thereof.

11. On July 18, 1975 the defendant terminated the services of all its truck drivers and subcontracted all of the deliveries of groceries, produce, bakery, meat and dairy to persons not employed by defendant.

12. On July 18, 1975 the defendant filed a petition with Bankruptcy Judge C. Albert Parente seeking an order rejecting the collective bargaining agreement between plaintiff and defendant, as an executory contract. This took place prior to the termination of defendant's last thirty-two (32) truck drivers.

13. Section 63(c) of the Bankruptcy Act, 11 U.S.C. 103(c) provides that the rejection of an executory contract shall also constitute a breach of such contract as of the date of the filing of the petition, to wit., July 18, 1975. See Exhibit "C" annexed hereto.

14. Section 301(a) of the Labor Management Relations Act provides that suits for violation of collective bargaining agreements are to be brought in any district court of the United States.

15. That the termination of the thirty-two (32) truck drivers and the subcontracting of the work that those drivers performed, as well as the breach of said collective bargaining agreement, by filing a rejection petition with the Bankruptcy Division of this Court, are matters that must be submitted to arbitration under the terms and conditions of said collective bargaining agreement.

WHEREFORE, plaintiff prays for judgment compelling the defendant to specifically perform its collective bargaining agreement with plaintiff and to submit any grievances between them to the grievance procedure agreed upon by the parties hereto

Dated: Queens, New York
July 24, 1975

J. Warren Mangan

J. WARREN MANGAN, ESQ.

Attorney for Plaintiff
32-43 49th Street
Long Island City, New York 11103
(212) 726-6009

STATE OF NEW YORK)
)   ss.:
COUNTY OF QUEENS)

JOHN G. HOHMANN, being duly sworn, deposes and says:

That your deponent is the Vice President of Truck Drivers Local Union No. 807, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, the plaintiff in this action; that your deponent has read the foregoing complaint and knows the contents thereof; and that the same are true to deponent's own knowledge.

John G. Hohmann

E. WARREN MANGAN
NOTARY PUBLIC, State of New York
No. 31-[illegible]
Qualified in Westchester County
Certificate filed in Queens County
Term Expires March 30, 1977

Sworn to before me this
24 day of July, 1975.

Bohack's Answer and Counterclaim to Action to Compel Arbitration

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

- x

TRUCK DRIVERS LOCAL UNION :
807, INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, CHAUFFEURS, WARE- : Civil Action
HOUSEMEN AND HELPERS OF No. 75C 1191
AMERICA, :

Plaintiff, : ANSWER
AND
-against- : COUNTERCLAIM

THE BOHACK CORPORATION, :

Defendant. :

- x

Defendant THE BOHACK CORPORATION, a debtor in possession, ("Debtor") by its attorneys, Kelley Drye & Warren and Shaw & Levine, for its Answer to the Complaint herein, alleges as follows:

1. It admits the allegations of paragraphs 1 and 2 of the Complaint.

2. It admits the allegations of paragraph 3 of the Complaint except that it denies that its principal place of business is in Brooklyn, New York and states that this place of business is in Queens, New York.

3. It admits the allegations of paragraph 4 of the Complaint.

4. It admits the allegations of paragraph 5 of the Complaint except it denies that prior to December 16, 1974 all of the deliveries to its stores were made by truck

drivers employed by defendant and represented by plaintiff.

5. It denies the allegations of paragraphs 6 and 7 of the Complaint.

6. It denies the allegations of paragraph 8 of the Complaint except that it admits that defendant received the original copy of Exhibit B attached to the Complaint.

7. It admits the allegations of paragraph 9 of the Complaint.

8. It admits the allegations of paragraph 10 of the Complaint except that it denies that any persons enjoined by Judge Parente did not appear in that action, and refers to Judge Parente's preliminary injunction as to the accuracy of the text thereof.

9. It admits that on July 18, 1975 it terminated the services of the truck drivers it employed that day pursuant to its proposed plan of arrangement of creditors and except as so admitted, denies the allegations of paragraph 11 of the Complaint.

10. It admits the allegations of paragraph 12 of the Complaint.

11. The allegations of paragraphs 13 and 14 of the Complaint set forth conclusions of law to which the defendant does not respond.

12. It denies the allegations of paragraph 15 of the Complaint except it admits that the Union's claim that defendant has subcontracted work in violation of the

collective bargaining agreement has not been and may upon the approval of the Bankruptcy Court be submitted to an arbitration tribunal with jurisdiction of the subject matter under the terms and conditions of said collective bargaining agreement.

FIRST AFFIRMATIVE DEFENSE

13. The Complaint fails to state a claim on which relief may be granted.

COUNTERCLAIM

14. Defendant repeats and realleges its answers to paragraphs 1 through 4 of the Complaint with the same force and effect as if more fully set forth herein.

15. Defendant is engaged in an industry affecting commerce within the meaning of Section 301(a) of the Labor Management Relations Act of 1947, as amended, 29 U.S.C. §185(a).

16. At all times relevant there existed and there still exists between the parties to this action a collective bargaining agreement, a true copy of which is attached as Exhibit A to the Complaint.

17. Since May of 1975 and to date there exists between the parties a dispute as to whether the defendant's liquidation of its warehousing and distribution operation pursuant to a proposed plan of arrangement constitutes a subcontract of unit work prohibited by Article 32 of the parties' agreement.

18. This dispute is arbitrable pursuant to Article 8, Section 1 of said agreement which contains an agreed upon exclusive method for its resolution through arbitration.

19. The defendant is willing to submit said dispute to this arbitration procedure if permitted by the Bankruptcy Court.

20. The said collective bargaining agreement between the parties contains a no-strike clause barring plaintiff from conducting a strike, walkout, or work stoppage, or establishing a picket line at any of defendant's various places of business during the term of said agreement.

21. On June 30, 1975 the plaintiff and its members conducted and unless restrained will again conduct an unlawful strike and unlawful picketing at the defendant's terminal and at sixteen (16) of its retail stores in violation of the parties' collective bargaining agreement.

22. Defendant repeats and realleges its answer to paragraph 10 of the Complaint with the same force and effect as if more fully set forth herein.

23. As a result of these unlawful acts, substantial and irreparable injury and interference with defendant's property has occurred and will continue to occur if the plaintiff resumes such unlawful acts. Such irreparable injury includes the loss of substantial revenues, and more significantly the diversion of defendant's customers to competitors with consequent irrevocable injury to defendant's

goodwill, all of which damages are impossible to determine with precision.

24. Damages are an inadequate remedy for the injury which defendant has suffered and will continue to suffer unless plaintiff's unlawful acts are restrained.

WHEREFORE, defendant prays for a judgment permanently compelling plaintiff to specifically perform its collective bargaining agreement with defendant and to cease and desist from its violation thereof and more particularly enjoining and restraining plaintiff and all of its members, officers, employees and agents and all other persons in active concert or participation with them from engaging in or continuing or organizing, inducing or encouraging others to engage in or continue any strike, walkout, work stoppage or any other cessation of work, or establishing any picket line at defendant's various places of business or at the premises of any other person or party with whom defendant does business.

Dated: August 1, 1975

KELLEY DRYE & WARREN

By
(a member)
350 Park Avenue
New York, New York 10022
(212) PL 2-5800

SHAW & LEVINE
770 Lexington Avenue
New York, New York 10021
838-7127

Attorneys for Defendant

STATE OF NEW YORK)
: ss.:
COUNTY OF KINGS)

FRANKLIN E. KNIBEL, being duly sworn, deposes and says:

That your deponent is the Chairman of The Bohack Corporation, the defendant in this action; that your deponent has read the foregoing answer and counterclaim and knows the contents thereof; and that the same are true to deponent's own knowledge.

Franklin Knibel
Chairman

Sworn to before me this
1st day of August, 1975.

Notary Public

JOSEPHINE ROBINSON
NOTARY PUBLIC, State of New York
No. 41-[illegible]
Qualified in Queens County
Term Expires March 30, 1977

Bohacks Proposed Order to Show Cause, with a Temporary Restraining Order, Submitted to District Court on August 1, 1975

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

- x

TRUCK DRIVERS LOCAL UNION NO. 807, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,

Plaintiff,

-against-

THE BOHACK CORPORATION,

Defendant.

- x

Civil Action
No. 75C 1191

ORDER TO SHOW CAUSE
WITH TEMPORARY
RESTRAINING ORDER

Upon reading and filing the annexed affidavit of Joseph Binder sworn to on June 30, 1975, the transcript of the sworn testimony of witnesses at a hearing on June 30, 1975 before Hon. C. Albert Parente, Bankruptcy Judge in Bankruptcy No. 74 B 933, and the pleadings, affidavits and all papers heretofore filed herein, let plaintiff show cause before this Court on the   day of August, 1975, at   o'clock in the forenoon of that day, at the United States District Court, 225 Cadman Plaza East, Brooklyn, New York

WHY an order should not be made in this proceeding restraining and enjoining the plaintiff from conducting a strike, walkout, or work stoppage, or establishing a picket line at defendant's various places of business or at the premises of any other party or person doing business with defendant during the pendency of this action.

Sufficient cause having been shown therefor, and it appearing that plaintiff is about to commit the acts complained of, to the irreparable injury of defendant, pending the hearing and determination of this motion, plaintiff is hereby restrained and enjoined from conducting a strike, walkout, or work stoppage or establishing a picket line at defendant's various places of business or at the premises of any other party or person doing business with defendant.

Let personal service of a copy of this order and the papers on which it is based on the plaintiff or its attorneys on or before the day of August, 1975 be deemed good and sufficient service.

Dated: Brooklyn, New York
August , 1975

UNITED STATES DISTRICT JUDGE

Affidavit of Joseph Binder Sworn to June 30, 1975 in Support of Motion

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
-------------------------------------x

In the Matter of   Bankruptcy No. 74B933

THE BOHACK CORPORATION,

Debtor.

-------------------------------------x

THE BOHACK CORPORATION,

Plaintiff,   AFFIDAVIT

-against-

TRUCK DRIVERS UNION LOCAL 807,
INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
et al,

Defendants.

-------------------------------------x

STATE OF NEW YORK)
)SS:.
COUNTY OF KINGS)

JOSEPH BINDER, being duly sworn, deposes and says:

I am the Executive Vice-President of THE BOHACK CORPORATION, the plaintiff and Debtor in Possession herein. I submit this affidavit in support of plaintiff's application for a temporary restraining order and preliminary injunction of the strike which commenced this morning at 6:00 A.M.

The conduct which we seek to enjoin is a strike, either authorized or "wildcat", by members of TRUCK DRIVERS LOCAL 807, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, who are employed by

BOHACK as drivers of trucks that pick up merchandise from wholesale grocers and transport it to the various BOHACK stores.

The background of the proposed action and our application to enjoin it is fairly simple. One of the costliest items is the debtor's operations prior to the filing of the original petition under Chapter XI was the operation of the warehouses at Bohack Square. As part of the proposed Plan of Arrangement and since approximately November 1974, BOHACK has discontinued that operation and purchased its groceries directly from wholesale grocers. Of the approximately 90 stores BOHACK is operating, about 60 located largely in Nassau and Suffolk Counties were serviced by Bozzuto's Inc., located in Cheshire, Connecticut; and about 27 stores located largely in Brooklyn and Queens were serviced by Filigree Foods, Inc., of Totowa, New Jersey. The members of Local 807 did all of the driving in the operation, taking Bohack trucks to the various suppliers, and then delivering the merchandise to the individual Bohack stores.

On or about May 1, 1975, Filigree filed its own Chapter XI proceeding in The United States District Court for New Jersey, and a Receiver was appointed. Filigree stopped supplying merchandise to BOHACK and they will not supply us in the future. Inasmuch as almost one-third of the operating BOHACK stores are involved, I contacted Bozzuto's Inc. to determine whether they woul expand their operation to cover all our stores. I was told that the same considerations of logistics that limited the initial course of business still applied and that they could not accommodate us, although they wished to help, and thus agreed to supply seven stores on a temporary basis.

I immediately sought other sources of grocery supply, and the only one that was economically feasible turned out to be KRASDALE FOODS, INC., which started supplying us on May 5, 1975. KRASDALE, however, has its own drivers, who belong to LOCAL 138, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, and deliveries to BOHACK stores will be made by those drivers under the terms of the arrangement between BOHACK and KRASDALE, the only arrangement available to BOHACK.

BOHACK's drivers, naturally unhappy about the proposal, and various union officials have indicated that a strike may occur at any moment, as the drivers feel that they are being forced into vacations and otherwise injured. On May 15, 1975, plaintiff was served with a 24 hour notice, under Section 2 of the Rider Agreement to the 1973-1976 Area Wide Master Freight Agreement (Exhibits "A" and "B"). On May 16, 1975, the JOINT LOCAL COMMITTEE FOR NEW YORK CITY, upheld the Union's position and thereafter the Union sought, by motion returnable in the Supreme Court of the State of New York, to confirm such award.

The application was removed to the United States District Court for the Eastern District of New York pursuant to the applicable federal rules of civil procedures and the award has not as yet been confirmed. BOHACK has consistently taken the position that the Local Committee was without jurisdiction to render such award and that the issue rather must be resolved by the National Grievance Committee inasmuch as an interpretation of the National Agreement is involved.

Notwithstanding the fact that this award has not yet been confirmed, the Union has bypassed its own contractual procedure in the desire to push BOHACK to the wall on this matter

It is respectfully submitted that any strike by the drivers would effectively shut down the Debtor and destroy any chance of turning it into a profitable operation and implementing the proposed Plan of Arrangement now under consideration by BOHACK's creditors. The irreparable nature of such injury, as well as its immediate damage is so obvious that it need not be belabored by me in this application.

In this regard, it should be noted that defendants will not be harmed if the injunction is issued. There is specific machinery for the resolution of just such a jurisdictional disput within the INTERNATIONAL BROTHERHOOD OF TEAMSTERS and Article 30 of the Area Wide Master Freight Agreement sets out the method for settling such a dispute. It further provides:

> "Pending such termination, the Employer shall not be precluded from seeking appropriate legal or administrative relief against work stoppages or picketing in furtherance of such dispute."

Moreover, I am advised by counsel that where a jurisdictional dispute between two labor unions is involved, and the Debtor is an innocent bystander, as is the situation here, the Bankruptcy Court has the power to enjoin a strike or the establishment of a picket line. (See, IN THE MATTER OF CLEVELAND AND SANDUSKY BREWING CO., 11 F. Supp. 198, 29 Am. B.R. (N.S.) 393 (N.D. Ohio 1935). It is clear that this combination of merit and irreparable injury requires the granting of this application.

The immediate damage to BOHACK is immense. As of 9:00 o'clock this morning, June 30, 1975, there were 40 undelivered truckloads of meat, groceries and other items in the Bohack Terminal but there were pickets not only at the Bohack Terminal but at the following stores:

143-66 243rd Street, Rosedale
802 Manhattan Avenue, Brooklyn
249-26 Northern Boulevard, Littleneck
66-26 Metropolitan Avenue, Middle Village
Hillside and Grancis Lewis Boulevard, Hollis
7420 Third Avenue, Brooklyn
82-15 151st Street, Howard Beach
2475 Jericho Turnpike, Garden City Park
Rocky Point
571 Grandview Avenue, Ridgewood
149-28 14th Avenue, Whitestone
176-64 Union Turnpike, Flushing
158 Gates Avenue, Ridgewood
97-15 Metropolitan Avenue, Forest Hills
8420 Broadway, Elmhurst
79-15 Elliot Avenue, Elmhurst

Moreover, Bozutto's drivers have been told about the pickets and have been instructed not to cross the picket lines at any stores. In fact, the Union is attempting to close out the entire BOHACK chain.

Each day's loss of business represents $500,000.00 in loss of cash flow to BOHACK.

If the strike is allowed to continue, the Debtor will cease to exist as an operating entity.

WHEREFORE, it is respectfully requested that a preliminary injunction issue pending the outcome of this litigation, and that pending the hearing of the motion the Court temporarily restrain the defendants from committing the acts complained of.

Joseph Binder

Sworn to before me this 30th
day of June, 1975.

Transcript of Hearing on June 30, 1975 Before Hon. C. Albert Parente, Bankruptcy Judge in Bankruptcy No. No. 74 B 933

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

---x

In the Matter of

ORDER TO SHOW CAUSE WITH TEMPORARY
RESTRAINING ORDER,

THE BOHACK CORPORATION,

Plaintiff,

-against-

TRUCK DRIVERS UNION LOCAL 807, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS, et al,

Defendants.

---x

U.S. District Court
Jamaica, New York

June 30, 1975
2:30 P.M.

HEARING

BEFORE: HON. C. ALBERT PARENTE,
Bankruptcy Judge

* * *

Transcript of Hearing on June 30, 1975 Before Hon. C. Albert Parente, Bankruptcy Judge in Bankruptcy No. 74 B 933

APPEARANCES:

J. STANLEY SHAW, ESQ.
Attorney for Plaintiff
770 Lexington Avenue
New York, New York 10021
BY: JESSE I. LEVINE, ESQ.,
Of Counsel.

KELLEY, DRYE & WARREN, ESQS.
Attorneys for Plaintiff
350 Park Avenue
New York, New York 10022
BY: MARC L. SILVERMAN, ESQ.,
Of Counsel.

J. WARREN MANGAN, ESQ.
Attorney for Defendant
32-43 49th Street
Long Island City, New York 11103

* * *

THE COURT: Let the record show that this is a preliminary hearing to ascertain whether the Court should sign a temporary restraining order in the matter of the Bohack Corporation, Debtor and Plaintiff, against Truck Drivers Union Local 807, International Brotherhood of Teamsters, Defendants.

I will hear from the attorney for the Debtor, Plaintiff.

MR. LEVINE: Your Honor, with respect to the two issues involved herein, the question of the Court's jurisdiction, the question of award which said to cease and desist on the activity that you've been engaged in since December of 1974.

THE COURT: This Court has the authority to set aside--

MR. MANGAN: (Interp'g.) There is no precedent at all for it, Your Honor.

THE COURT: I am establishing a precedent by undertaking an appeal to a higher authority.

MR. MANGAN: It is clear, regardless of the position you take with regard to the arbitration award, that this Court does not have jurisdiction to render an injunction. It is without jurisdiction by way of Section 104 of the Norris-LaGuardia Act.

JOSEPH BINDER, called as a witness herein, after first having been duly sworn by The Honorable C. Albert Parente, testified as follows:

EXAMINATION BY MR. LEVINE:

Q Are you employed by the Bohack Corporatio

A Yes, I am the Executive Vice President of the Bohack Corporation.

Q Are you involved in a labor matter?

A I am.

Q As a matter of fact, in December of 1974, when Bohack entered into an agreement with Filigree Foods to undertake the supply of wholesale groceries to Bohack--

A (Interp'g.) Sometime prior to December, 1974 we entered into a contract.

Q Did there come a time during that approximate period when you were approached or notified by any officer of the Defendant union as to objection to the process with respect to either Filagree, Shopwell or any other group?

A In December, 1974, we, Bohack, closed its produce and dairy warehouses and contracted to purchase such goods from Shopwell, Inc. The arrangement with Shopwell was that they deliver the produce from the warehouses directly to the Bohack stores.

Shopwell did, and presently still has Local 277 of the International Teamsters Union.

At that point, Bohack was summoned to the New York City Committee Trucking Association and, after a discussion at this meeting, it was decided by the panel to refer this as a jurisdictional dispute to the Joint Counsel. It was alleged that Local 907 wanted the work that was being done by Local 277, which was the Shopwell union, and, at that point, this was referred to Joint Counsel 16, Queens, as a jurisdictional problem between the two I.B.T. locals.

Q Were you advised by Joint Counsel 16?

A No, I was not.

Q When was the first time you knew that the dispute was being reopened?

A About April 30.

Q That was '75?

A '75, I'm sure.

In the interim, groceries were being purchased F.O.B. by these warehouses and being picked up by 807 drivers. On April 30, Filigree went into Chapter 11. There is a limited amount of wholesale grocers in New York, but Bohack had no choice but to go to Krasdale which also has a contract with 147, and Krasdale's management would only take on the supplying of Bohack stores--approximately 30 stores, on an F.O.B. store delivery basis.

Q When you say you went to Krasdale, did you approach any other wholesaler?

A We approached Met Foods, White Cross

Foods, and we approached Associated Foods, who also filed Chapter 11.

Q Was your approach to all those wholesalers to let Local 807--your approach to the wholesalers--was it to let Local 807 pick up at the warehouses to deliver to the stores with no objection of the union and the same with the associated union?

A Yes.

Q Are there any other suppliers in the metropolitan area that you could have gone to other than Krasdale, Met, and Associated?

A The only other one is Bizzuto, in Cheshire, Connecticut, which is a geographical problem for Bohack as far as the dollars involved.

Q There are no other wholesale grocers in New York?

A Referable to Bohack, no.

Q Did Met Foods and White Cross agree to supply Bohack?

A They did, we have a credit problem with them. When Associated went to Chapter 11, they told us they have no more supplies.

Q Was Associated able to fulfill your needs?

A No, they did not.

Q Did there come a time shortly after April 30th, 1975, when you received notice that the union sought to reopen the matter?

A Yes, we got a notice of the meeting. And, I went down with our Chairman of the Board, Mr. Noble.

Q Did you object to the jurisdiction of the Local Committee at that time?

A At the outset of the meeting, the Chairman of the panel thought that we were in the wrong jurisdiction, as we did, and we objected.

The panel went ahead with the discussion when we left, and then we were informed of the award a day or two later.

Q Approximately what volume of business does Bohack do at the present time on a daily basis?

A Well, the average volume is about 4.2, to 4.3 million dollars per week. The volume fluctuates by the day; e.g., a Monday would be about $3,500 and in days toward the latter part of the week, the volume increases.

Q So, that if the strike went on until the end of the week, it would be more?

A If the strike goes on past today, Bohack's loss would be beyond reproach.

Q Can you tell me what deliveries have been made today of merchandise to Bohack stores, if any?

A Well, the basic merchandise comes out of Bohack Square. Our meat and delicatessen is delivered by 807 drivers.

I have forty trailers of merchandise that is not moving and since the strike has started there have been various confrontations in at least two stores, one on Fresh Pond Road, where the police had to be called by Local 807 pickets for interfering with the drivers of the other stores of Bohack, in trying to force them into not crossing the picket lines and not drive for the Bohack stores.

Q Are they being held back?

A Bohack is essentially out-of-business today because of the fact of forty trailer loads of merchandise sitting in Bohack Square.

THE COURT: Is any of this merchandise perishable?

THE WITNESS: The meat can sit for a limited period of time before deterioration sets in.

The other items, Your Honor, are all fresh items.

MR. MANGAN: It is my understanding th all of this is in Bohack stores and all of the warehouse employees who load these trailers are available to unload them, if the case came to getting the trailers loaded back into the refrigeration.

It is my understanding that effective July 7, which is next Monday, the meat is no longer going to be delivered out of Bohack Square by the employees of Bohack but is going to go the way of the other work, to non-employe of Bohack, in direct contravention and in opposition of what that award of May 16 says.

This is not a matter of all parties standing pat. In fact, Monday, July 7, or thereabouts, there is going to be activity taken by the company as in opposition and direct violation of the arbitration award, and it is going to be at the expense of anothe ten to fifteen employees of Bohack, working under the same contract.

He said to you that the meat that was in the warehouse was being delivered by local 807 drivers who are employees of Bohack. They are no longer performing that work. There is going to be no Bohack.

The parties are not going to be in a position of status quo. In fact, the company intends, as of Monday, to discontinue the contract of its employees for delivery of meat and to direct that work elsewhere.

The failure of the employer to comply with an arbitration award, but continues the practice, and on Monday there will be a further continuation and what the Court will be doing is put these people in a position where they are unable to take the economic recourse, having complied in every way to the contract.

THE COURT: I ask you again, Counselor, in your expertise in the labor field, does economic recourse contemplate a strike?

MR. MANGAN: I said to you, Your Honor, I am reading from the contract and the prohibitions that are in the agreement, that neither party can take certain action. Those prohibitio are lifted if the employer fails to comply with the arbitration award within ten days after it is rendered.

I refer to Article 46, Section 1 and I refer you to those prohibitions that there shall be no strike, lock-out, tie-up, work stoppage, or legal proceedings, and within ten days, if there has been no compliance, then either party can resort to those activities and they include, yes, Your Honor, they include strike.

THE COURT: Let's have the record clear.

It is the contention of counsel that they merely went there to test the jurisdiction. They appeared specifically and objected to jurisdiction?

MR. MANGAN: Counsel was not there, Your Honor. I was there. I saw what transpired. The Chairman of the panel was the only one who raised the point. The employer never even raised the point and it was after that being raised, then, the employer went right ahead, submitted to the agreement and procedure and argued out its position and there was no determination that was made.

I don't think there is any question in anyone's mind that you don't have to walk out of a meeting once you have conceded jurisdiction. You are there, if you submit to the jurisdiction, and you argue on behalf of your client. You never moved to stay the arbitration

They never moved to arbitrate the award. They wanted to get the arbitration proceeding then. They argued the proceeding and we decided to get a confirmation of the award, then the employer comes forward and says we don't have any right under the no-strike provision.

We can't have it both ways. Either there is this Section 1-A or then we are entitled to continue with this economic activity and this Court is without jurisdiction to enjoin it.

MR. LEVINE: In the interpretation of the Norris-LaGuardia Act, we objected to jurisdiction. We went to the meeting and objected to the jurisdiction immediately thereafter. That very issue is being tested.

THE COURT: Do you have any documentary evidence in support of the facts?

MR. LEVINE: We have the testimony of Mr. Binder.

THE WITNESS: The first time, in December or January, I was specifically told, "Don't bring any employees," and that the only ones allowed in the room were the principals.

The first time, I went myself; the second time that I went, in May, I knew that I had this problem so I went with our Chairman of the Board knowing I wasn't allowed to bring an employee.

MR. MANGAN: When was this?

THE WITNESS: On the day of this proceedi and I notified you that I would be there.

The point I'm trying to make is that I thought you were there as a representative of the union, not as an attorney.

When I left there, then I was told. I didn't believe you were going to be there as an attorney.

MR. MANGAN: Am I anything but the attor for Local 807?

THE WITNESS: I don't know.

THE COURT: We are moving ahead beyond the aspect of what we have before us.

The Court's opinion, after having carefully weighed the arguments on both sides, that since the contract contained an arbitration provision which was entered into prior to bankruptcy, and in behalf of the union was not judicially sanctioned, the issue was submitted to arbitration without the consent of the trustee or upon the necessary authorization of the Bankruptcy Court. Consequently, the Court finds that the award rendered by the New York City Joint Local Committee was bereft of validity and being in contravention to Section 26 of the Bankruptcy Act as superceded by Rule 919, Subdivision B.

Accordingly, the Court finds no bars to the signing of a temporary restraining order in view of the no-strike provision contained in the collective bargaining agreement between the parties.

I grant the parties an immediate right of appeal without the formal notice, if the District Court will entertain such a motion.

In other words, permission is orally given under Rule 801, Notice of Appeal.

This matter, in view of its gravity, may be brought before a District Court for immediate review and I would ask the union corporation, until the District Court either affirms or reverses my decision, to comply with the order of this Court restraining a further action by the union.

MR. MANGAN: Your Honor, I think you should sign an Order setting down a date for a hearing on the preliminary injunction.

THE COURT: I assume there will be immediate review so that we can set it down on any date.

The only issue before me is the temporary restricting order which I have just signed.

(Whereupon, the hearing was concluded.)

* * *

CERTIFICATE

STATE OF NEW YORK }
COUNTY OF QUEENS } SS.:

I, JOSEPHINE LONGO, a shorthand reporter and Notary Public within and for the State of New York, do hereby certify:

That the minutes hereinbefore set forth are a true and accurate record of Hearing.

I further certify that I am not related to any of the parties to this action by blood or marriage; and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 9th day of July, 1975.

Josephine Longo
JOSEPHINE LONGO

* * *

Stipulation Between Bohack and Local 807 Adjourning and Staying Proceeding to Reject Labor Agreement

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

- x

TRUCK DRIVERS LOCAL UNION NO. 807, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFERS, WAREHOUSEMEN AND HELPERS OF AMERICA,

Plaintiff,

- against -

THE BOHACK CORPORATION,

Defendant.

- x

Civil Action
No. 75C 1191

STIPULATION

It is hereby stipulated by and between the undersigned attorneys for the parties hereto that the application to reject the collective bargaining agreement between the parties hereto presently pending before Bankruptcy Judge Parente in Bankruptcy No. 74:B933 be adjourned and stayed until a date convenient to the parties and their attorneys after the date of the decision of the United States Court of Appeals for the Second Circuit in the case of Shopmen's Local Union No. 455, International Association of Bridge Structural and Ornamental Iron Workers, AFL-CIO v. Kevin Steel Products, Inc., 381 F. Supp 338 (S.D.N.Y. 1974);

It is further stipulated that should Judge Parente or any other judge of the Bankruptcy Court determine that the aforesaid collective bargaining agreement be rejected and should such determination not be reversed in any appeals which may be taken therefrom, such rejection determination shall have the same effect as if it had been made on a date, that number of calendar days after July 25, 1975 as shall correspond to the number of calendar days between the date that the Bankruptcy Judge shall open the hearing on the rejection petition and the date that the Bankruptcy Judge shall render his decision rejecting said agreement, inclusive.

KELLEY DRYE & WARREN
Attorneys for The Bohack Corporation

By ______________________

J. WARREN MANGAN
Attorney for Local 807

J Warren Mangan
____

Dated: July 28, 1975

BEST COPY AVAILABLE

Summons and Notice of Trial to Reject Labor Agreement

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

---------------------------------------x

In the Matter of

THE BOHACK CORPORATION,

Bankrupt.

Bankruptcy No.
74 B 933

---------------------------------------x

THE BOHACK CORPORATION,

Plaintiff,

-against-

TRUCK DRIVERS UNION LOCAL 807,
INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, et al.,

Defendants.

SUMMONS AND NOTICE
OF TRIAL

---------------------------------------x

TO THE ABOVE-NAMED DEFENDANTS:

You are hereby summoned and required to serve upon SHAW AND LEVINE, plaintiff's attorney, whose address is 770 Lexington Avenue, New York, New York, a motion or an answer to the complaint which is herewith served upon you, on or before November 17, 1975, and to file the motion or answer with this court not later than the second business day thereafter. If yo[illegible]l to do so, judgment by default will be taken against [illegible]he relief demanded in the complaint.

You are hereby notified that trial of the proceeding [illegible]is complaint has been set for November 17, 1975 at 9:30 o'clock a.m., in Room 445, 900 Ellison Avenue, Westbury, New York.

C. ALBERT PARENTE

C. ALBERT PARENTE

By:

Address:

Date of issuance: November 7, 1975

Complaint to Reject Labor Agreement Between Bohack and Local 807

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

--------------------------------------x

In the Matter of

THE BOHACK CORPORATION,

Debtor.

Bankruptcy No. 74B933

COMPLAINT

--------------------------------------x

THE BOHACK CORPORATION,

Plaintiff,

-against-

TRUCK DRIVERS UNION LOCAL 807,
INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, et al.,

Defendants.

--------------------------------------x

THE BOHACK CORPORATION, debtor-in-possession, by its attorneys, SHAW AND LEVINE, respectfully alleges as follows:

1. That a petition for an arrangement under Chapter XI of the Bankruptcy Act was filed by the Debtor herein on July 30, 1974 and that applicant has continued in possession of its property by order of this Court dated July 30, 1974.

2. That as required by Rule 11-11 of the Chapter XI Rules, the Debtor's petition for an arrangement herein was accompanied by a statement of the Debtor's executory contracts, one of which was the contract between THE BOHACK CORPORATION and TRUCK

DRIVERS UNION LOCAL 807, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMENT AND HELPERS OF AMERICA (hereinafter referred to as Local 807).

3. Said contract was entered into on July 1, 1973 to run until June 30, 1976, and the applicant desires, in the best interests of the estate, permission of this Court to reject said executory contract.

4. The reason applicant seeks to reject said contract is that it is onerous and burdensome to the Debtor and substantial savings and potential profits can be realized and effected if such contract is rejected.

5. As part of its Plan of Arrangements, THE BOHACK CORPORATION, is subleasing or selling portions of its terminal at Bohack Square and will deal directly with suppliers who will deliver to Bohack stores rather than a central warehouse.

6. The discontinuation of the warehousing operation is an integral part of the proposed plan in that the debtor can become profitable in its store operations, which operations have been greatly reduced since the filing of the original petition herein, if the costly warehouse and trucking operations now conducted by the debtor can be eliminated. Inasmuch as the wholesale suppliers whose agreements to sell to the debtor have been approved by this Court can deliver directly to the stores much more cheaply than the present utilization

of Local 807 drivers, there is placed on the debtor a substantial cash flow drain which can be eliminated by rejection of the Local 807 contract, and concurrently, discontinuing the warehouse operation.

7. Additionally, the proposed plan of arrangement, requires disposition of certain real property assets of the debtor, including portions of the terminal at Bohack Square. Rejection of this contract and the warehouse operation will allow the needed flexibility to carry out that part of the plan.

8. Unless the foregoing two goals can be achieved, no successful plan of arrangement can be made and fulfilled. Rejection of Local 807's contract is necessary to achieve those goals.

9. The savings and the potential profits will inure to the benefit of the general creditors of the estate of the Debtor and will make feasible the carrying out of the Plan of Arrangement which is now before the Creditors' Committee for final agreement before presentation for confirmation.

WHEREFORE, applicant prays for judgment rejecting the executory contract between the debtor and Local 807, dated

July 1, 1973, and granting such other and further relief as to the Court may seem just and proper.

Dated: New York, New York
November 14, 1975

SHAW AND LEVINE
Attorneys for Debtor
770 Lexington Avenue
New York, New York 10021
(212) 838-7127

Answer to Complaint Seeking Rejection of Labor Agreement

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

In the Matter of

THE BOHACK CORPORATION,

Bankrupt.

BANKRUPTCY NO.

74-B-933

THE BOHACK CORPORATION,

Plaintiff,

-against-

TRUCK DRIVERS UNION LOCAL 807,
INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, et al.,

Defendants.

ANSWER

Defendant, Truck Drivers Local Union No. 807, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, by its attorney, J. Warren Mangan, for its Answer to the Complaint herein alleges as follows:

1. It admits the allegations set forth in Paragraph 1 of the Complaint.

2. It denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 2 of the Complaint.

3. It denies all of the allegations contained in Paragraph 3 of the Complaint, except it admits that the plaintiff

and defendant are parties to a collective bargaining agreement covering the terms and conditions of employment for plaintiff's drivers, and that the term thereof is July 1, 1973 through March 31, 1976.

4. It denies all of the allegations contained in Paragraph 4 of the Complaint.

5. It denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 5 of the Complaint.

6. It denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraphs 6 and 7 of the Complaint except it denies all the allegations contained therein regarding the trucking operation.

7. It denies all of the allegations contained in Paragraphs 8 and 9 of the Complaint.

FOR FURTHER SEPARATE AND AFFIRMATIVE DEFENSES DEFENDANT SAYS:

8. The Complaint fails to state a claim against defendant upon which the requested relief can be granted.

9. That the debtor in possession is a party to the prevailing collective bargaining agreement between plaintiff and defendant by expressly assuming or implicitly adopting its terms and, therefore, is subject to the exclusive termination restrictions set forth in Section 8(d) of the Labor-Management Relations Act, 1947, as amended.

10. That the equities are decidedly in favor of maintaining and enforcing the collective bargaining agreement between plaintiff and defendant.

WHEREFORE, defendant demands that the Complaint be dismisses and that the Court award to the defendant its cost and attorney's fees for the defense of this action.

J. Warren Mangan, Esq.
Attorney for Defendant
32-43 49th Street
Long Island City, New York 11103

Judgment Rejecting Bohack's Labor Agreement with Local 807, Entered and Filed on May 28, 1976

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

In The Matter of]

THE BOHACK CORPORATION,] Bankruptcy No. 74: B 933

Debtor,]

--]

THE BOHACK CORPORATION,]

Plaintiff,]

-against-]

TRUCK DRIVERS LOCAL UNION NO. 807,]
INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, ET AL.,]

Defendants.]

This cause came on for trial before the Court, Honorable C. Albert Parente, Bankruptcy Judge, presiding and the issues having been duly tried and verdict having been directed for the plaintiff,

IT IS ORDERED AND ADJUDGED that plaintiff's labor agreement with the defendant be, and hereby is, rejected as of July 19, 1975.

C. Albert Parente
Bankruptcy Judge

Dated: Westbury, N.Y.
May 28 1976

Order of Bankruptcy Judge Parente, Dated October 15, 1976

FILED
OCT 15 1976
C. ALBERT PARENTE
BANKRUPTCY JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

In the Matter of

THE BOHACK CORPORATION,

Debtor.

THE BOHACK CORPORATION,

Plaintiff,

-against-

TRUCK DRIVERS LOCAL UNION NO. 807, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, et al.,

Defendants.

Bankruptcy No. 74-B-933

ORDER

This matter having come on for a hearing before Bankruptcy Judge C. Albert Parente of this Court on September 28, 1976 and Stanley Shaw, Esq. having appeared for plaintiff and J. Warren Mangan, Esq. having appeared for defendant,

IT IS HEREBY ORDERED that the parties hereto submit the grievances alleging plaintiff's violation of Article 40, Section 4(a), Article 50, Section 2 and Rider paragraph 2, of the prevailing collective bargaining agreement, to arbitration, in accordance with the procedure set forth in Section 26 of the Bankruptcy Act, to determine if plaintiff breached said collective bargaining agreement and to render a finding on damages, if necessary.

Dated October 15, 1976

C. Albert Parente
C. Albert Parente
Bankruptcy Judge

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Order of Bankruptcy Judge Parente, Dated October 21, 1976

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
OCT [illegible] 1976
C. ALBERT PARENTE
BANKRUPTCY JUDGE

In the Matter of

THE BOHACK CORPORATION,

Debtor,

THE BOHACK CORPORATION,

Plaintiff,

-against-

TRUCK DRIVERS LOCAL UNION NO. 807, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, et al.,

Defendants.

Bankruptcy No. 74-B-933

ORDER

This matter having been remanded to the District Court with a suggestion as contained in the opinion of the UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT - Docket Nos. 75-7694, 76-3003 decided August 9, 1976 that this Court be directed to proceed promptly in conformity with said opinion, and the matter having come on for a hearing on September 28, 1976 and J. Stanley Shaw, Esq., having appeared for the Plaintiff and J. Warren Mangan having appeared for the Defendant, and the matter having been heard by this Court on September 28, 1976; and the Plaintiff having moved for reargument by notice of motion returnable in this Court on October 14, 1976, and said motion for reargument having been heard by this Court on October 14, 1976, and the Court having rendered its decision on September 28, 1976, and having rendered a further decision on October 14, 1976, with respect to the motion for reargument.

IT IS HEREBY ORDERED that Plaintiff's motion for reargument is hereby granted and upon said reargument the Court adheres to its original decision of September 28, 1976 as modified by this order.

IT IS HEREBY ORDERED that in the discretion of this Court that the parties hereto submit the following issues to arbitration:--

a) The extent of damages to be recovered by the discharged employees upon the rejection of the labor contract between The Bohack Corporation and Truck Drivers Local Union No. 807 - International Brotherhood of Teamsters.

b) The amount and extent of pension, health insurance, welfare, vacation benefits and the value of seniority of each employee effected by said rejection of the employment contract.

c) The amount of the mitigation of such damages by reason of the subsequent employment of each employee or the receipt of unemployment insurance paid to said employee.

d) The issue of whether or not the contract rejected by the employer should be specifically enforced by the reinstatement of each employee notwithstanding the fact that the contract has expired and;

IT IS ORDERED that all issues determined by the arbitrators be subject to the further order of this Court, as to the status, amount and the validity of such arbitrator's award and it is

FURTHER ORDERED that the arbitrator shall proceed in accordance with the procedures set forth in Section 26 , 11 U.S.C. Section 49

Dated: October 21 1976

C. Albert Parente
Bankruptcy Judge

Notice of Appeal to District Court Filed by Local 807 on October 28, 1976

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

In the Matter of

THE BOHACK CORPORATION,

Debtor.

BANKRUPTCY NO. 74 B 933

NOTICE OF APPEAL

THE BOHACK CORPORATION,

Plaintiff,

-against-

TRUCK DRIVERS LOCAL UNION NO. 807, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, et al,

Defendants.

Truck Drivers Local Union No. 807, I.B.T., a defendant herein, appeals to the District Court from that portion of the order of the Hon. C. Albert Parente, Bankruptcy Judge, entered in this case on October 15, 1976 which requires the parties hereto to submit the grievances set forth in that order to an arbitration panel in accordance with the procedure set forth in Section 26 of the Bankruptcy Act, 11 U.S.C. 49, rather than the grievance procedure in their collective bargaining agreement.

Truck Drivers Local Union No. 807, I.B.T. further appeals to the District Court from that portion of the order of the Hon. C. Albert Parente, Bankruptcy Judge, entered in this case on October 21, 1976 which limits the scope of the issues to be submitted to arbitration to the following:

a) The extent of damages to be recovered by the discharged employees upon the rejection of the labor agreement between The Bohack Corporation and Truck Drivers Local Union No. 807, I.B.T.

b) The amount and extent of pension, health insurance, welfare, vacation benefits and the value of seniority of each employee effected by said rejection of the employment contract.

c) The amount of the mitigation of such damages by reason of the subsequent employment of each employee or the receipt of unemployment insurance paid to said employee.

d) The issue of whether or not the contract rejected by the employer should be specifically enforced by the reinstatement of each employee notwithstanding the fact that the contract has expired.

Truck Drivers Local Union No. 807, I.B.T. further appeals from that portion of Bankruptcy Judge Parente's October 21, 1976 order requiring issues determined by the arbitrator to be submitted to the further order of the Bankruptcy Court as to the status, amount and validity of such arbitrator's award and the requirement that the arbitration shall proceed in accordance with the procedures set forth in Section 26 of the Bankruptcy Act, 11 U.S.C. 49.

Dated: Queens, New York
October 27, 1976

J. WARREN MANGAN, ESQ.
Attorney for Appellant
32-43 49th Street
Long Island City, New York 1110
(212) 726-6009

Memorandum of Decision of Ch. J. Mishler
Dated April 21, 1977

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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Bankruptcy No.
74 B 933

75 C 905
75 C 1191

In the Matter of

THE BOHACK CORPORATION,

Debtor.

- - - - - - - - - - - - - - - - - - -

THE BOHACK CORPORATION,

Plaintiff,

-against-

Memorandum of Decision

TRUCK DRIVERS LOCAL UNION NO. 807, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, et al.,

Defendants.

April 21, 1977

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APPEARANCES:

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J. Warren Mangan, Of Counsel

MISHLER, CH. J.

This is a consolidated appeal from two orders of the bankruptcy court, Parente, J., entered on October 15 and 21, 1976.

The facts of this case are set forth in the Second Circuit's opinion in Truck Drivers Local 807 v. Bohack, 541 F.2d 312 (2d Cir. 1976). To provide a proper framework for our discussion, we will summarize briefly the salient events of the Bohack Corporation's ("Bohack") recent, troubled past. In March 1973, Bohack and Truck Drivers Local 807 ("the union") entered into a three-year collective bargaining agreement. At that time, Bohack employed more than 120 members of the union. On July 30, 1974, Bohack filed a petition for arrangement under Chapter XI of the Bankruptcy Act, 11 U.S.C. §701 et seq. An order issued that day allowed Bohack to continue business operations, which then included approximately 150 retail supermarkets, as a "debtor-in-possession." See 11 U.S.C. §742. Four and one-half months later, on December 16, 1974, Bohack terminated produce, dairy and bakery operations at its Brooklyn warehouse in favor of a contract with an independent wholesaler, leaving 60 Bohack truckdrivers without work. The union filed a grievance alleging Bohack had violated a provision of the collective bargaining agreement that limited the employer's right to transfer to others work done by members of the local union. On May 16, 1975, the Grievance Committee ruled that Bohack had violated article 32 of the Master Agreement.

Nonetheless, that same month, Bohack changed grocery suppliers. The new suppliers had their own drivers and, consequently, more Bohack drivers lost their jobs. By July 18, 1975, the remaining workers were terminated and that same day Bohack moved to reject the collective bargaining agreement pursuant to §313 of the Bankruptcy Act, 11 U.S.C. §713. The union began an action in this court pursuant to §301(a) of the Labor-Management Relations Act, 29 U.S.C. §185(a), to compel Bohack to perform the collective bargaining agreement. The union also sought to confirm the grievance award, the subject of a state court proceeding that Bohack had removed to the federal court.

On November 19, 1975, this court dismissed the union's petition to confirm the arbitrator's award, and remanded to the bankruptcy judge "the issue of the advisability of granting the debtor leave to arbitrate." On appeal, the Second Circuit affirmed the remand, although it directed this court to vacate an order restraining the union from picketing Bohack. The bankruptcy judge was instructed to determine:

> (1) whether to affirm the contract, or whether the debtor has so conformed to the contract as to make it binding, see In re Public Ledger, Inc., 161 F.2d 762, 767 (3d Cir. 1947), cited with approval in REA Express, Inc., supra, 523 F.2d at 170; (2) whether to grant the debtor's petition to reject the agreement as onerous, adhering to our admonition in Kevin Steel to "move cautiously in allowing rejection of a collective bargaining agreement," 519 F.2d at 707; and (3) whether to order arbitration under its terms in any event, and on what issues.

541 F.2d at 320-21 (footnote omitted).

Several months prior to the Second Circuit's decision, on May 19, 1976, Bankruptcy Judge Parente had entered an order rejecting the collective bargaining agreement, which had expired on March 31, 1976, as onerous and burdensome to the debtor. On October 15, 1976, acting pursuant to the Second Circuit's remand, Judge Parente directed the union to submit its grievances with the debtor-in-possession "to arbitration, in accordance with the procedure set forth in Section 26 of the Bankruptcy Act, to determine if [the debtor-in-possession] breached said collective bargaining agreem[illegible] and to render a finding on damages, if necessary." [illegible] ber 21, 1976, after hearing re-argument, Judge Parente [illegible] ed a second arbitration order, directing the parties to submit the following issues to arbitration:

> a) The extent of damages to be recovered by the discharged employees upon the rejection of the labor contract between The Bohack Corporation and Truck Drivers Local Union No. 807 - International Brotherhood of Teamsters.
>
> b) The amount and extent of pension, health insurance, welfare, vacation benefits and the value of seniority of each employee effected [sic] by said rejection of the employment contract.
>
> c) The amount of the mitigation of such damages by reason of the subsequent employment of each employee or the receipt of unemployment insurance paid to said employee.
>
> d) The issue of whether or not the contract rejected by the employer should be specifically enforced by the reinstatement of each employee notwithstanding the fact that the contract has expired . . . .

In addition, this order provided that

> issues determined by the arbitrators be subject to the further order of this Court, as to the status, amount and the validity of such arbitrator's award and it is
>
> FURTHER ORDERED that the arbitrator shall proceed in accordance with the procedures set forth in Section 26, 11 U.S.C. Section 49.

Both Bohack and the union filed notices of appeal from the orders. On November 19, 1976, Judge Parente stayed arbitration pending the decision of this court.

REJECTION OF THE COLLECTIVE BARGAINING AGREEMENT

Local 807 argues that Bohack failed to establish that the labor contract was onerous and burdensome and, therefore, the bankruptcy court erred in granting the petition to reject the agreement. Moreover, aside from the question of burdensomeness, the union contends that the debtor-in-possession became a party to the agreement by expressly or implicitly adopting its terms.

In Shopmen's Local 455 v. Kevin Steel Prod., Inc., 519 F.2d 698 (2d Cir. 1975), the Second Circuit touched on the considerations that must inform the decision to allow rejection of a collective bargaining agreement:

> [A] showing that the employer is not improperly motivated merely by a desire to rid itself of the union and its adherents, . . . convincing proof of the company's financial condition, the source of its difficulties and the benefit to be gained by rejecting the contract, and a careful weighing of the equities against rejection, including the loss of intangible employee rights.

Id. at 707. The desire of the debtor-in-possession to improve its financial status is not, by itself, a valid reason for allowing rejection. Id. See Brotherhood of Railway, Airline and Steamship Clerks v. REA Express, 523 F.2d 164 (2d Cir.), cert. denied, ___ U. S. ___, 96 S.Ct. 451 (1975). See generally Miller, Bankruptcy Law Introduction, The Second Circuit Review, 1974-75 Term, 42 Brooklyn L. Rev. 709 (1976); 42 Brooklyn L. Rev. 726 (1976).

In this case, the bankruptcy judge properly allowed rejection of the collective bargaining agreement. Indeed, the choice presented was a simple one. If the contract was not rejected, the debtor would not be able to reorganize. Either the debtor was relieved of the contract or the entire business would collapse.

According to the testimony of Joseph Binder, the president of Bohack prior to the filing of the Chapter XI petition and its current executive vice-president, as of January 1974, Bohack had approximately 140 stores in operation. These stores were supplied by warehouses located at a central terminal in Brooklyn, known as Bohack Square. There was a grocery warehouse, meat warehouse, dairy warehouse, produce warehouse and delicatessen commissary. Approximately 50% of the 37 acres of terminal property were used for the warehouse and distribution operation. Bohack annually paid one and one-half million dollars for the carrying charges, maintenance and taxes on that portion of the terminal.

After the filing of the Chapter XI petition, the Creditors Committee directed Bohack to reduce the number of its retail outlets. The closings began in earnest in November 1974. By November 1975, the company held 72 retail stores, essentially now a regional chain, down from a high of 200 stores in 1973, when it qualified as a general supermarket. The closings substantially reduced the volume of merchandise handled by the warehouse, which created a "negative cash flow."[1] (Tr. Nov. 17, 1975, at 29-30). As the store closings increased, the Creditors Committee directed Bohack to rid itself of the terminal, or face complete liquidation.

In December 1974 and January 1975, the produce, dairy and grocery warehouses were closed. To meet its dairy and produce needs, Bohack negotiated a supply agreement with a wholesaler, Shopwell, Inc. The debtor requested that its drivers be allowed to pick up the merchandise from Shopwell, but the wholesaler flatly refused, indicating "they had enough problems without getting involved with another union" (Tr. Nov. 17, 1975, at 39). Essentially the same pattern was repeated as Bohack closed the remaining warehouse operations and turned to wholesalers to meet its supply needs. Eventually, all the warehouses were closed and Bohack completely vacated the terminal except for some maintenance equipment and vehicles.

The savings to Bohack from the terminal closing totaled approximately two million dollars, including $925,000 saved by eliminating the labor contract and approximately one million dollars then being lost annually by the warehouse operation (Tr. Nov. 17, 1975, at 68-74). There was testimony, accepted as the opinion of an expert by Judge Parente, that a Chapter XI re-organization was impossible if the debtor continued to operate the warehouse (Tr. Nov. 17, 1975, at 81-82). Indeed, the union did not take issue with Bohack's position that the warehouse had to close (Tr. Nov. 17, 1975, at 70-71). The problem, of course, was that the new suppliers refused to use the Bohack drivers. The debtor, who was in an extremely precarious financial position—aside from other Chapter XI losses, it was unable to purchase the $2,500,000 worth of merchandise necessary to sustain its then current weekly sales of $3,200,000—hardly had the bargaining power to force the new suppliers to use Bohack drivers. And, obviously, a company that had lost ten million dollars up to the date of the Chapter XI petition (Tr. Nov. 17, 1975, at 75-76) could not undertake a re-organization while paying a million dollars annually to truck drivers for whom there is no work. Thus, the point is not, as the union argues, that the transportation costs to Bohack under the new agreements are the same as under the Local 807 contract, but that circumstances left Bohack with a costly and entirely superfluous labor agreement. See Matter of Cheney Bros., 12 F. Supp. 605, 609 (D. Conn. 1935). This is not a case of rejection of a labor contract to improve the debtor's financial position. It is, rather, the hard but clear choice between termination of a collective bargaining agreement involving a hundred and twenty workers or the collapse of a company that employs more than 2,000 men and women.

Moreover, Binder's testimony establishes that the company was in no way motivated by a desire to rid itself of the Local 807 contract. At every stage of the warehouse closing, Bohack attempted to negotiate agreements with its new wholesalers that would provide work for the union. In one instance, the contract with Bozzuto, a grocery supplier, for a time allowed the union to deliver the groceries from Bohack Square to the retail stores after the foodstuffs were trucked in by Bozzuto. Finally, transportation costs under the new agreements do not provide Bohack with a discernible advantage over the collective bargaining contract (Tr. May 19, 1975, at 33).

The union also claims that, aside from the issue of burdensomeness, Bohack either expressly assumed or adopted the terms of the collective bargaining agreement. It points out that between the filing of the Chapter XI petition and the rejection of the contract, Bohack employed Local 807 drivers, paid the agreed wage rates, recognized seniority, contributed to the union's health and pension plans, and engaged in grievance proceedings. In the union's view, "the debtor so conformed to the contract as to make it binding." Truck Driver's Local 807, supra at 321, citing In re Public Ledger, Inc., 161 F.2d 762, 767 (3d Cir. 1947).

In In re Public Ledger, Inc., supra, a Chapter X re-organization that involved the implied assumption of a labor contract by the trustee in bankruptcy, the circuit court cited several circumstances giving rise to the adoption of a contract:

> [T]he term adoption is usually applied . . . to a situation in which a receiver either (a) indicates an intention fully to perform the obligations of the insolvent, (b) indicates an intention to insist on full counter-performance, or (c) acts in such a way with reference to a contract . . . that fairness to the solvent party requires that the consequences of adoption be attributed to his action . . . .

Id. at 767, quoting Clark, Foley and Shaw, Adoption and Rejection of Contracts and Leases by Receivers, 46 Harv. L. Rev. 1111, 1123 (1933). In REA Express, Inc., supra, Judge Mansfield framed the issue as whether the debtor-in-possession misled the employees into believing "that they will have continuity of employment on pre-existing terms." Id. at 171. These standards imply affirmative conduct that is inconsistent with a later move to reject entirely the contract. In most circumstances, merely continuing to adhere to the labor agreement for a period following the filing of a bankruptcy petition should not constitute assumption of the contract. The stricter rule, advocated by the union, would result in rejection of labor contracts at the time the bankruptcy petition is filed even though the need for rejection is not yet apparent. Moreover, a reasonable amount of time is necessary to evaluate the financial condition of the bankrupt and then to formulate a plan for re-organization. *See* *In re American National Trust*, 426 F.2d 1059, 1064 (7th Cir. 1970); 8 *Collier on Bankruptcy* ¶3.15[6], at 204 (14 ed. 1976).

Here, the conduct of the debtor following the Chapter XI petition was quite inconsistent with an assumption of the labor agreement. In the first place, the financial deterioration of the company, concomitant with the Chapter XI proceeding, put the union on notice that changes would be necessary to avert collapse of the supermarket chain. *See* *REA Express, Inc.*, *supra* at 171. Within four and one-half months of the Chapter XI petition, Bohack had laid off half of its drivers. Indeed, the union sought arbitration, claiming that Bohack had breached the collective bargaining agreement. Despite the Grievance Committee's finding in favor of the union, Bohack continued to close down warehouses and lay off drivers. The same day that the company moved to reject the labor agreement, the remaining Bohack drivers were terminated. These actions are hardly those of a company that intends to complete fully a labor agreement and nor could there have been any misunderstanding of the debtor's fidelity to the terms of the agreement. Survival, not contract, had the highest priority.

ARBITRATION

Both parties raise objections to the bankruptcy judge's orders directing arbitration. The debtor contends that rejection of the contract mooted the need for arbitration and that Local 807 waived its right to arbitrate by submitting a claim for damages to the bankruptcy court as an administrative claim. The union argues that the bankruptcy judge erred in ordering arbitration pursuant to the grievance procedure of §26(b) of the Bankruptcy Act, 11 U.S.C. §49(b), since the collective bargaining agreement contains a grievance mechanism. It also contends that any grievance award is not subject to review by the bankruptcy judge as to "the amount and validity of that award."

It is important to recognize at the outset that two distinct, although not necessarily incompatible, policy considerations exist in this case. One involves the broad equitable powers and discretion vested in the bankruptcy court, giving it the ability to protect and administer the estate for the benefit of both creditors and insolvent. 11 U.S.C. §11. See In re Westec Corporation, 449 F.2d 243, 244 (5th Cir. 1971); 1 Collier on Bankruptcy ¶2.60 et seq. (14th ed. 1976). Among the powers exercised by a bankruptcy court within its equity jurisdiction are the allowance and disallowance of claims. 11 U.S.C. §11(2). The Supreme Court has held that

> a bankruptcy court has full power to inquire into the validity of any claim asserted against the estate and to disallow it if it is ascertained to be without lawful existence. Lesser v. Gray, 236 U.S. 70, 35 S.Ct. 227, 59 L.Ed. 471. And the mere fact that a claim has been reduced to judgment does not prevent such an inquiry. As the merger of a claim into a judgment does not change its nature so far as provability is concerned, Boynton v. Ball, 121 U.S. 457, 7 S.Ct. 981, 30 L.Ed. 985, so the court may look behind the judgment to determine the essential nature of the liability for purposes of proof and allowance. Wetmore v. Markoe, 196 U.S. 68, 25 S.Ct. 172, 49 L.Ed. 390, 2 Ann. Cas. 265.

Pepper v. Litton, 308 U.S. 295, 305-06, 60 S.Ct. 238, 244-45 (1939).

The other consideration present in this case is the federal labor policy favoring arbitration "as the means of resolving disputes over the meaning and effect of collective-bargaining agreements." Nolde Brothers, Inc. v. Local 358, Bakery & Confectionery Workers, 45 U.S.L.W. 4251, 4254 (U.S. Mar. 7, 1977). The grievance machinery of a collective bargaining agreement, a part of the ongoing collective bargaining process, "is at the very heart of the system of industrial self-government." United Steelworkers of America v. Warrior & Gulf Navigation Co., 363 U.S. 574, 581, 80 S.Ct. 1347, 1352 (1960). Moreover, courts generally defer to the arbitrator's interpretation of an agreement.

> The labor arbitrator is usually chosen because of the parties' confidence in his knowledge of the common law of the shop and their trust in his personal judgment to bring to bear considerations which are not expressed in the contract as criteria for judgment . . . . The ablest judge cannot be expected to bring the same experience and competence to bear upon the determination of a grievance, because he cannot be similarly informed.

Id. at 582-83, 80 S.Ct. at 1352-53. Plenary review by courts of the merits of an arbitrator's decision would render meaningless a contractual provision that the arbitrator's decision is final:

> [T]he question of interpretation of the collective bargaining agreement is a question for the arbitrator. It is the arbitrator's construction which was bargained for; and so far as the arbitrator's decision concerns construction of the contract, the courts have no business overruling him because their interpretation of the contract is different from his.

United Steelworkers of America v. Enterprise Wheel and Car Corp., 363 U.S. 593, 599, 80 S.Ct. 1358, 1362 (1960).

The emphasis placed on arbitration as a means of preserving labor peace, and the unique role of the bankruptcy court in protecting both creditors and insolvent, are principles that may be consistently animated in this case. To begin with, rejection of a collective bargaining agreement by a bankruptcy court does not obviate the need for arbitration. The Second Circuit was quite specific on this point in its Bohack opinion, stating in a footnote that rejection of the labor agreement "does not . . . absolve the parties . . . from a contractual duty to arbitrate their disputes." 541 F.2d at 321 n.15. See Nolde Brothers, Inc. v. Local 358, Bakery & Confectionery

Workers, supra. Even in the context of a bankruptcy proceeding, the unique role and special expertise of the arbitrator may be of invaluable assistance to the bankruptcy judge and may serve to avoid unnecessary conflict between labor union and debtor. See L.O. Koven & Brother, Inc. v. Local 5767, United Steel, 381 F.2d 196 (3d Cir. 1967).[/2]

This is not to say, however, that in ordering arbitration a bankruptcy judge can relinquish to the arbitrator decisions that touch on special bankruptcy interests. For example, it has been held an abuse of discretion for a bankruptcy court to allow an arbitrator to decide the question of the preference of the union's claims with respect to other creditors of the bankrupt. Johnson v. England, 356 F.2d 44, 52 (9th Cir.), cert. denied, 384 U.S. 961, 86 S.Ct. 1587 (1966). See also In re Muskegon Motor Specialities Co., 313 F.2d 841 (6th Cir.), cert. denied, 375 U.S. 832, 84 S.Ct. 51 (1963). Thus, in deciding whether a grievance or claim arising under a rejected collective bargaining agreement is appropriate for arbitration, the touchstone is whether arbitration will preserve labor peace, bring to bear the expertise of the arbitrator on issues such as working conditions or shop practices, and, at the same time, avoid usurption of the bankruptcy court's critical role in the re-organization proceeding. With these principles in mind, we turn to an examination of the bankruptcy court's orders directing arbitration. /3

1. The Order of October 21

The bankruptcy judge's arbitration order does not satisfy entirely the above criteria. The first three issues referred to the arbitrator, which involve the amount of damages suffered by the employees as a result of the rejection, are appropriate for arbitration. The labor agreement specifies that "[a]ll factual grievances or questions of interpretation" arising under the contract must be the subject of a grievance proceeding. (National Master Freight Agreement, article 8). A broad arbitration clause such as this encompasses every grievance unless the dispute is specifically excluded. International Union of Elec., Radio & Mach. Workers v. General Electric Co., 332 F.2d 485, 488 (2d Cir.), cert. denied, 379 U.S. 928, 85 S.Ct. 324 (1964); Publishers' Ass'n of New York City v. New York Mailers' Local Six, 317 F.2d 624, 625 (2d Cir. 1963), vacated on other grds, 376 U.S. 775, 84 S.Ct. 1132 (1964). Moreover, aside from the presumption of arbitrability, the discharge and other claims of the employees are matters involving interpretation of the contract. See General Teamsters, Chauffeurs & Helpers v. Blue Cab Co., 353 F.2d 687, 690 (7th Cir. 1965). The fact that working conditions or shop practices are not directly at issue does not mean the special expertise of the arbitrator is of no value. For example, valuing seniority rights under the unfulfilled portion of the collective bargaining agreement, as well as ascertaining the mitigating value of the new seniority rights of terminated employees who subsequently obtained employment, does not appear to be simply a matter of dollars and cents, rather, it involves knowledge of the likelihood of attrition and advancement of employees within the industry and an interpretation of contract provisions respecting seniority rights. See Nolde Brothers, Inc., supra (severance pay); Straus-Duparquet, Inc. v. Local 3, Int. Bro. of Elec. Wkrs., 386 F.2d 649, 650 (2d Cir. 1967) (vacation claims); International Longshoremen's Ass'n v. New York Shipping Ass'n, 403 F.2d 807 (2d Cir. 1968) (medical services). Finally, labor peace is a legitimate consideration. The debtor is still in business and, as the Second Circuit made clear, the union has the right to picket the supermarket chain, which could have disastrous consequences for the re-organizing company. Compare In re Muskegon Motor Specialties Co., supra at 843.

The bankruptcy judge, however, erred in directing the arbitrator to decide whether the rejected agreement should be enforced by re-instatement of each employee. True, in a non-bankruptcy context, this issue would be appropriate for arbitration. But in the context of a Chapter XI arrangement, an arbitrator's decision on this point will affect interests consigned to the bankruptcy court, specifically, whether employment of the Local 807 drivers is "onerous and burdensome" to the debtor-in-possession. Indeed, in allowing rejection of the contract, the bankruptcy judge found that Bohack could not attain financial viability and at the same time employ Local 807 drivers. If the arbitrator is now allowed to re-instate terminated employees, the rejection of the contract becomes meaningless.[14]

In addition, we disagree with the order of October 21, 1976, with respect to the provision that all issues determined by the arbitrators are subject to review by the bankruptcy court "as to the status, amount and the validity of such arbitrator's award." The Second Circuit specifically limited the bankruptcy judge's authority over an arbitration award to determining "the priority and status" of the award as a matter of bankruptcy law. *Truck Drivers Local 807 v. Bohack Corp.*, *supra* at 321 n.15. No mention was made of discretion to change the amount awarded or inquire into the validity of such an award. As pointed out earlier, questions of interpretation of the contract are for the arbitrator, not the courts. Indeed, by ordering arbitration, the bankruptcy judge implicitly acknowledged that the arbitrator possesses special expertise and competence in resolving labor grievances. There is no point to arbitration proceedings if a bankruptcy judge, lacking experience in the collective bargaining process, undertakes a plenary review of the arbitrator's decisions concerning areas where the arbitrator's knowledge and experience are far superior. Once an award is made, however, its status and priority are questions for the special expertise of the bankruptcy court, which may then relegate the claims of the union to a proper place in the framework of the re-organization.

Finally, the union contends that the contract controls the question of the grievance procedure, not §26 of the Bankruptcy Act. We agree. The agreement to arbitrate survives the filing of the bankruptcy petition, *Tobin v. Plein*, 301 F.2d 378 (2d Cir. 1962), the expiration of the collective bargaining contract, *Nolde Brothers, Inc.*, *supra*, and the rejection of the labor agreement, *Truck Drivers Local 807*, *supra*. If the contractual duty to arbitrate survives rejection, there is no reason why the grievance procedures established by the parties should not also survive. Moreover, in *Tobin v. Plein*, *supra*, the Second Circuit rejected the argument that arbitration proceedings ordered by a bankruptcy court must be governed by §26 of the Bankruptcy Act:

> [T]his section is clearly drawn to provide arbitration machinery where no contractual arrangements exist. It does not supersede explicit contractual provisions.

301 F.2d at 381, *citing* *Schilling v. Canadian Foreign S.S. Co.*, 190 F. Supp. 462 (S.D.N.Y. 1961).[5] Here, the collective bargaining agreement contains detailed procedures for the arbitration of grievances arising under the agreement. These provisions govern the arbitration directed by

the bankruptcy court.[6]

2. The Order of October 15

A confusing situation exists because of the October 15 order signed by Judge Parente. In that order, Local 807 was directed to submit its grievances with the debtor "to arbitration, in accordance with the procedure set forth in §26 of the Bankruptcy Act, to determine if [the debtor-in-possession] breached said collective bargaining agreement and to render a finding on damages, if necessary." The subsequent order of October 21 only directed arbitration on specific issues, and did not mention arbitration of the issue of whether the collective bargaining agreement was breached. Since both orders are appealed, we will assume that the second order did not vacate the first one.

The question is whether, in view of the rejection of the collective bargaining agreement, it is necessary to determine whether the agreement was breached by the employer in the months following the filing of the bankruptcy petition and prior to rejection. Had the contract been assumed or affirmed,

> a claim for wages or other contractual benefits for the period of the contract after employment ceased would arise only if the arbitrator or the court also finds that the contract was breached by the employer's actions after the petition was filed.

Truck Drivers Local 807, supra at 321 n.16. Rejection of the contract, however, operates as a unilateral breach of the contract at the time of filing the Chapter XI petition. 11 U.S.C. §103(c). See Truck Drivers Local 807, supra at 321; 8 Collier on Bankruptcy ¶3.15[7], at 206 (14 ed. 1976). Thus, as of July 30, 1974, the date of the Chapter XI petition, the collective bargaining agreement was terminated by Bohack. Whether Bohack was within its rights under the contract in eliminating jobs is a moot question. The only issue that remains is whether the employees suffered damages as a result of the rejection and, if so, how much. See 8 Collier on Bankruptcy ¶3.15[10], at 208 (14 ed. 1976). Any finding of damages would, of course, be diminished by salaries paid to union members after filing of the petition, as well as by any wages and rights obtained from employment after termination and during the remainder of the period covered by the collective bargaining agreement.

This analysis rests, in part, on the pre-Chandler Act doctrine, judicial in origin, that the filing of a bankruptcy petition is an anticipatory breach of the bankrupt's executory contracts. City Bank Farmers Trust Co. v. Irving Trust Co., 299 U.S. 433, 440, 57 S.Ct. 292, 295 (1937); S & W Holding Co. v. Kuriansky, 317 F.2d 666, 668 (2d Cir. 1963). The nonbankrupt party had the option to treat the contract as breached and seek damages. The enactment of the Chandler Act in 1938, however, gave the trustee or receiver the option to assume or reject executory contracts of the bankrupt, 11 U.S.C. §713(1), and no mention was made of the anticipatory breach doctrine. See Countryman, Executory Contracts in Bankruptcy: Part II, 58 Minn. L. Rev. 479, 520 (1974). A pre-Chandler Act decision of the Second Circuit presaged the effect on the anticipatory breach doctrine of this congressionally authorized option:

> A trustee in bankruptcy is entitled to a reasonable opportunity to determine whether to adopt or reject an executory contract. If he adopts it and performs the bankrupt's duties thereunder, he can insist upon performance by the other party. While the trustee still has the matter of adoption under advisement, it may be assumed that he could restrain the other party

> from disposing of the subject matter of the contract or otherwise acting in a manner to impair the trustee's option to adopt the contract.

Matter of United Cigar Stores Co. of America, 89 F.2d 3, 6 (2d Cir. 1937) (Swan, J.). Accord, Matter of Gulfco Investment Corp., 520 F.2d 741, 743 (10th Cir. 1975).

The concept of bankruptcy-as-anticipatory breach nonetheless underpins the apparent fiction that rejection of the executory contract is a breach of the contract as of the date of filing of the petition. If the contract is rejected,

> the bankrupt's anticipatory breach is never cured and the conduct of the other party in dealing with the subject-matter of the contract in the meantime has only resulted in mitigating the damages caused by rejection.

In Matter of Cigar Stores, supra at 6. Thus, in the present case, the filing of the Chapter XI petition was an anticipatory breach of the collective bargaining agreement, although the union could not assert the breach against the debtor-in-possession. 6 Colliers on Bankruptcy, ¶3.23, at 576-78 (14 ed. 1972). Once the contract is rejected, the anticipatory breach could never be "cured," and the question of violations of the labor contract following the filing of the petition became academic. The only issue left by the rejection is damages, as mitigated by the conduct of the parties following the Chapter XI petition.

In sum, the order of the bankruptcy court allowing rejection is affirmed. The October 21 arbitration order is affirmed insofar as it directs arbitration on the three issues involving damages resulting from the rejection. Otherwise, the order of October 21 is reversed, with directions to proceed in accordance with this opinion as to procedures for arbitration and review of any arbitration award. The order of October 15 is reversed and vacated.

Jacob Mishler
U. S. D. J.

FOOTNOTES

/1
Prior to the filing of the Chapter XI petition, Bohack's merchandise volume from its stores was approximately $300,000,000 a year. By November 1975, the volume had dropped to $165,000,000 per year (Tr. Nov. 17, 1975, at 38.

/2
The debtor's heavy reliance on Allegaert v. Perot, 76 C 7235 (2d Cir. Jan. 25, 1977), in arguing against arbitration, is misplaced. At issue there was the arbitrability, not of labor disputes, but of claims arising under the securities laws, which implicated the federal policy favoring determination of stock fraud questions in the federal courts. Slip. op. at 1531.

/3
The debtor contends that, "by filing its claim in the Bankruptcy Court as an administrative claim, 807 has waived its right to seek the same remedy in any other forum." For a number of reasons, we find this argument lacks merit. In the first place, in the context of a bankruptcy proceeding, waiver should not be a controlling consideration in ordering arbitration. Rather, the bankruptcy court must decide on the desireability of arbitration, taking into account the intent of one or both parties to avoid arbitration. The powers of a bankruptcy court to order arbitration are sufficiently broad to overcome a waiver by one of the parties. Second, courts have held that filing an unfair labor practice charge with the National Labor Relations Board does not waive the right to arbitration of a grievance involving the same facts. E.g., Amalgamated Local 55 v. Metal & Alloy Div., 396 F. Supp. 667, 670 (W.D.N.Y. 1975); Glass Bottle Blowers Ass'n v. Arkansas Glass Container Corp.,

(continued on next page)

/3 (continued)

183 F. Supp. 829, 830-31 (E.D.Ark. 1960), aff'd 286 F.2d 431 (6th Cir.), cert. denied, 366 U.S. 930, 81 S.Ct. 1651 (1961). Here, as in those cases, the union was attempting to explore all possible means of redress and did not act in a manner inconsistent with arbitration. See Luckenbach Overseas Corp. v. Curran, 398 F.2d 403, 405 n.3 (2d Cir. 1968); Chatham Shipping Co. v. Fertex S.S. Corp., 352 F. 2d 291, 293 (2d Cir. 1965). Finally, the debtor has failed to make any showing of prejudice resulting from the filing of the administrative claim. See ITT World Communications, Inc. v. Communications Workers of America, 422 F.2d 77, 82-83 (2d Cir. 1970).

/4
In addition, an award of the arbitrator directing re-instatement necessarily is an equitable remedy. The Bankruptcy Act however, "in its present form deals only with claims which can be converted to money." Countryman, Executory Contracts in Bankruptcy: Part II, 58 Minn. L. Rev. 479, 565-66 (1974).

/5
Rule 919 of the new Bankruptcy Rules provides in pertinent part:

> (b) Arbitration. On stipulation of the parties to any controversy affecting the estate the court may authorize the matter to be submitted to final and binding arbitration.

This rule also appears to be directed at disputes where contractual provisions do not exist.

/6 The question still remains as to the proper grievance jurisdiction under the collective bargaining agreement. In our memorandum of decision and order, dated November 19, 1975, we concluded that the grievance, as originally presented to the Joint Local Committee, "was a matter outside its jurisdiction and the proceedings upon which it was based, a nullity." 74 B 933, at 11 n.10 (Nov. 19, 1975). The union, in response to the Second Circuit's suggestion that "the parties could conceivably agree upon the proper grievance jurisdiction," 541 F.2d at 319 n.10, has withdrawn its allegation of a violation of article 32 of the Agreement. In its view, this means that "the Committee is the [proper] grievance tribunal." If the debtor disagrees, the bankruptcy court will have to determine the appropriate committee for arbitration.

* * *

Memorandum of Decision of Ch. J. Mishler
Dated April 26, 1977

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - -

Bankruptcy No.
74 B 933

In the Matter of

THE BOHACK CORPORATION,

75 C 905
75 C 1191

Debtor.

(77 C 244)

- - - - - - - - - - - - - - - - - - - -

THE BOHACK CORPORATION,

Plaintiff,

-against-

Memorandum of Decision

TRUCK DRIVERS LOCAL UNION NO. 807, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, et al.,

Defendants.

April 26, 1977

- - - - - - - - - - - - - - - - - - - -

APPEARANCES:

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Jesse I. Levine, William M. Rifkin, Of Counsel

O'CONNOR, QUINLAN & MANGAN, ESQS.
Attorneys for Defendants Truck Drivers Local No. 807
29-27 41st Avenue
Long Island City, New York 11101
J. Warren Mangan, Of Counsel

MISHLER, CH. J.

The following footnote is added to our opinion of April 21, 1977, at the end of the first sentence of the first full paragraph on page 28:

> /7
> Although the parties filed a notice of appeal from the orders of October 15 and 21, those orders did not directly involve the rejection of the contract. The May 28 order allowing rejection was immediately appealed to this court, and remained pending until this proceeding. Accordingly, this memorandum affirms the May 28 order.

ERRATA

P. 4, line 7 (from bottom): change May 19, 1976 to May 28, 1976.

Jacob Mishler
U. S. D. J.

Order of Ch. J. Mishler Dated May 4, 1977

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- -

	Bankruptcy No.
In the Matter of	74 B 933
THE BOHACK CORPORATION,	75 C 905 75 C 1191
Debtor,	77 C 244

- -

THE BOHACK CORPORATION,

Plaintiff,

-against-

TRUCK DRIVERS LOCAL UNION NO. 807, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, et al.,

Defendants.

ORDER

- -

The orders made and entered on May 28, 1976, October 15, 1976, and October 21, 1976, having been appealed to this court, and the court having rendered a decision made and filed April 21, 1977, as amended by an order made and filed April 26, [illegible] is hereby

ORDERED that the order of May 28 is affirmed; and it is further

ORDERED that the order of October 21, 1976, is affirmed to the extent that it directs arbitration on the three issues involving damages resulting from the rejection, and in all other respects is reversed with directions to proceed in accordance with the said memorandum of decision as to procedures for arbitration and review of any arbitration award; and it is further

ORDERED that the order dated October 15, 1976, is reversed and vacated.

Dated: Brooklyn, New York
May 4, 1977

Jacob Mishler
U. S. D. J.

Notice of Appeal to Second Circuit Filed by Local 807 on May 10, 1977

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

In the Matter of

THE BOHACK CORPORATION,

Debtor,

Bankruptcy No.
74 B 933

75 C 905
75 C 1191
77 C 244

THE BOHACK CORPORATION,

Plaintiff,

-against-

TRUCK DRIVERS LOCAL UNION NO. 807, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, et al.,

Defendants.

NOTICE OF APPEAL

SIRS:

NOTICE is hereby given that defendant, Truck Drivers Local Union No. 807, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Local 807), appeals to the United States Court of Appeals for the Second Circuit from the order of Chief Judge Jacob Mishler of the United States District Court for the Eastern District of New York, entered on May 4, 1977, only to the extent that it:

1. Affirms the order of Bankruptcy Judge, C. Albert Parente, dated May 28, 1976,

2. Reverses and vacates the order of Bankruptcy Judge, C. Albert Parente, dated October 15, 1976, and

3. Reverses that portion of the order of Bankruptcy Judge, C. Albert Parente's dated October 21, 1976 which directs arbitration of "d) The issue of whether or not the contract rejected by the employer should be specifically enforced by the reinstatement of each employee notwithstanding the fact that the contract has expired."

4. Directs the bankruptcy court to determine the appropriate committee to hear the arbitration if the Debtor disagrees that the New York City Joint Local Committee should hear Local 807's grievances.

Dated: Queens, New York
May 10, 1977

O'CONNOR, QUINLAN & MANGAN, P.C.
Attorneys for Defendant
29-27 41st Avenue
Long Island City, New York 11101
(212) 361-7950

by: J Warren Mangan
J. WARREN MANGAN, ESQ.

TO: SHAW & LEVINE, ESQS.
Attorneys for Plaintiff
770 Lexington Avenue
New York, New York 10021
(212) 838-7127

Notice of Appeal to Second Circuit Filed by Bohack, Dated May 18, 1977

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----------------------------------x

Bankruptcy No. 74B933

In the Matter of

75 C 905

THE BOHACK CORPORATION,

75 C 1191

Debtor.

77 C 244

-----------------------------------x

THE BOHACK CORPORATION,

Plaintiff,

NOTICE OF APPEAL

-against-

TRUCK DRIVERS LOCAL UNION NO. 807,
INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, et al.,

Defendants.

-----------------------------------x

SIRS:

PLEASE TAKE NOTICE that THE BOHACK CORPORATION, the above named plaintiff, hereby appeals to the United States District Court of Appeals for the Second Circuit from that part of the order of the Hon. Chief Justice Jacob Mishler entered in this action on the 4th day of May, 1977, which order reversed and vacated that part of the order of the Hon. C. Albert Parente, Bankruptcy Judge, of October 21, 1976, which ordered that all issues on damages, as a result of plaintiff's rejection of its executory labor agreement, to be determined by arbitrators, be subject to the further order of the bankruptcy court as to the status, amount and validity of the arbitrators award.

PLEASE TAKE FURTHER NOTICE that THE BOHACK CORPORATION also appeals to the United States District Court of Appeals for the Second Circuit from that part of the order of the Hon. Chief Justice Jacob Mishler entered in this action on the 4th day of May, 1977, which order reversed and vacated that part of the order of the Hon. C. Albert Parente, Bankruptcy Judge, of October 21, 1976, which ordered that the arbitrator[s] shall proceed in accordance with the procedures set forth in Section 26, 11 U.S.C. Section 49.

Dated: New York, New York
May 18, 1977

SHAW AND LEVINE
Attorneys for Debtor-Plaintiff
770 Lexington Avenue
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TO:

O'CONNOR, QUINLAN & WANGAN
Attorneys for Defendant
29-27 41st Avenue
Long Island City, New York 11101

Transcript of Testimony of Joseph Binder at Hearing to Reject Labor Agreement, on November 17, 1975

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- x

In the Matter of :

THE BOHACK CORPORATION, : 74 B 933

Debtor. :

- x

THE BOHACK CORPORATION, :

Plaintiff, :

-against- :

TRUCK DRIVERS UNION LOCAL 807, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, et al, :

:

Defendants.

- x

900 Ellison Avenue
Westbury, New York

November 17th, 1975
10:00 a.m.

BEFORE:

HON. C. ALBERT PARENTE,

Bankruptcy Judge.

- - - - - - - -

HEARING TO REJECT
LABOR AGREEMENT

PROCEEDED PURSUANT TO ORDER OF
CHIEF JUDGE JACOB MISHLER

APPEARANCES:

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OTTERBOURG, STEINDLER, HOUSTON & ROSEN, P.C.
Co-counsel to Creditors Committee
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New York, New York
BY: CONRAD DUBERSTEIN, ESQ., Of Counsel

PRESENT:

JOSEPH BINDER
Executive Vice President of
The Bohack Corporation

JOHN HOHMANN
Vice President of
Truck Drivers Union Local 807

THE COURT: Let the record show that this action to reject a labor contract involves Bohack, the Debtor in possession as Plaintiff, and Truck Drivers Union Local 807, International Brotherhood of Teamsters as Defendants, before this Court on an order by Chief Judge Jacob Mishler, directing the parties to appear with reference to the issue of the rejection of said contract.

Are we ready to proceed?

MR. SHAW: Yes.

MR. MANGAN: Yes.

MR. SHAW: Your Honor, to clarify the record so that there is no misunderstanding, the movement by the Debtor in possession by way of Order to Show Cause on July 17th I believe 1975 to reject the labor management agreement between the now Plaintiff and Defendant, I think it was procedurally inaccurate although full due notice was given, and this morning I have served the summons and complaint, an accelerated order, so that this hearing could begin. This order is pursuant to the mandate of Judge Mishler and so the record could be clear without hindrances rather than to ask Your Honor for an application for a Show Cause,we have issued a summons and complaint. However, the summons and complaint will be no more or less within the Order to Show Cause, so I think the record is straight.

In addition to that, I did talk to counsel for the Union and advised him as to what I was going to do. I suggested that if he would like to have a discovery and if he would like, also, to respond in Answer to the summons and complaint on formal pleadings, we would have no objection to any delay within a reasonable length of time or to any time that he thinks he needs, but I feel pursuant to the mandate of Judge Mishler we should go forward today and put on as much of the Debtor's case as possible.

With respect to the Answer, we would have the understanding that the Answer of Local 807 would come in the reasonable future, and that we would afford him all the rights that he is entitled to for a discovery proceeding.

THE COURT: Can you fix a time as to when you will be able to serve a response, I have pleadings by way of an Answer in this action? The Answer is just a plea, without in any way circumscribing your right to discovery which you are entitled under the Federal Rules of Civil procedure.

MR. MANGAN: Your Honor, I would think in addition to an Answer there may be a counterclaim and there may be some affirmative defenses.

During this weekend I will more carefully analyze, hopefully will appreciate the decision of the United States Court of Appeals for the Second Circuit, in the Kevin Steel Products, Inc.

I have also between the time that we were in Judge Mishler's chambers on I believe Wednesday and this morning, tried to find out what other decisions have been rendered by bankruptcy judges since the

Kevin Steel case came down on July 24th and I have been unable to find any.

MR. SHAW: REA cases.

MR. MANGAN: I am talking about --- do you mean REA cases which have came down possibly after July 24th?

MR. SHAW: Yes.

MR. MANGAN: I do not think so.

But the standards that were referred to in the Kevin Steel case placed the burden upon the Debtor in possession in order to satisfy a rejection of a collective bargaining agreement.

Now since this is a new area, I want to be sure that, one, any counterclaim is all inclusive; two, any affirmative defenses that we might have are also reflected in the pleadings.

It is only for those reasons that I would look for at least two weeks to file a responsive pleading.

THE COURT: The Court finds no objection to your request of two weeks, and deem it wholly reasonable under the circumstances.

MR. MANGAN: The other aspect of it is that I recognize Judge Mishler's comment, really, and the direction that something be done with regard to the rejection of the collective bargaining agreement.

I have not as yet reviewed the record that was established on August 1st, the return date of all the motions that was brought before Judge Mishler, but it is my recollection and the recollection of those who accompanied me on that day representing Local 807, that it was understood and agreed by the Court and the attorneys that the first issue that was going to be decided by Judge Mishler was the question of the confirmation of the collective bargaining agreement.

That once the confirmation of the arbitration award, not the bargaining agreement, but the arbitration award which was the one rendered I believe on May 16th, and which dealt with the sub-contracting issue.

The parties had entered into a stipulation --- I am not sure whether this Court has a copy of that stipulation but if it doesn't I will make a copy available --- on July 28th whereby the application pursuant to the Order to Show Cause would be stayed and adjourned pending the convenience of counsel and the convenience of the parties.

The understanding that was reached at that time was that based upon my contention and my belief and the record will so show that Judge Mishler was going to go forward with a determination on the question of the confirmation of that arbitration award, and that I personally didn't anticipate that there was going to be any movement on the part of the Debtor in possession with regard to this application for rejection until we had a decision on at least that motion and, possibly, all the motions that were before Judge Mishler.

When we appeared before Judge Mishler on Wednesday, the 12th of November, he indicated some surprise that Local 807 did not initiate at some point during the period between August 1st and November 12th their application and go forward on the stipulation because Kevin Steel was decided on July 24th. That even though the parties may not have been aware of that decision, the time that they entered into this stipulation that at some point between July 28th and November 12th that Local 807 should have gone forward on the application to reject the contract.

Frankly, I was surprised by that position. It is my client's position that the contract should not be rejected. There is some question based upon further discussions with those more knowledgeable than me regarding bankruptcy, that it is somewhat questionable whether or not the Union can go forward and seek rejection of a collective bargaining agreement and that that has to be done by the Debtor in possession.

However, it was my understanding based upon the exchange that we had with

Judge Mishler that he felt that the Union was in some way being dilitory in its approach to this matter.

Frankly, I could not understand this because it is the Union's three motions that is before him. It is the Union's position that it was looking for a determination, and it was waiting for a determination on those three motions. The Union only entered into the stipulation with the Debtor in possession because it just didn't make any sense for us to appear before you on an application to reject when we didn't have the Kevin Steel case decided --- at least, we did not know it was decided when we entered into that stipulation.

Furthermore, I know it was my understanding and I believe it was the understanding of the Debtor in possession, that what we agreed to on August 1st in Judge Mishler's Court room, was that that decision was going to come down first on the question of confirmation of the arbitration award and then all the other steps would follow thereafter.

So it isn't for reasons of postponing as I would like to see this matter go forward quickly and efficiently, but for the protection of my client that it be considered. It is not a matter of delaying on the part of the Union, but a matter of either misunderstanding as to what steps were going to go forward first or a change in position by somebody in the course of, during the period between August 1st and November 12th.

So I have requested the two weeks for the Answer and to put in any counterclaims or affirmative defenses that would take place.

I would also request of the Court given all of these circumstances that rather than go forward today with the taking of any testimony which I would have to consider and which would be somewhat procedurally disjointed.

Also, that I do not want my client to be put into the position that if by way of participation even though there may not be any cross examination, but not now to have the Debtor in possession put on his case at this time as it would be somewhat of participation in a proceeding prior to interposing an Answer and prior to conducting any discovery.

MR. SHAW: We would object to ---

THE COURT: It is somewhat irregular, we do not have a formal joinder of issue, I certainly agree with you in that regard, however, this is a Court of equity and time is of the essence. It is of the essence to your client as much as it is to the Debtor in possession.

Moreover, we have a mandate from Judge Mishler to proceed with all due dispatch. He sets this date down for trial.

I had the occasion to speak to Judge Mishler this morning and he advised me that he is rendering a decision on the confirmation award. He made me to understand that the temporary injunction will be lifted.

However, the question of whether the

Union had the right to proceed to arbitration should constitute a part of this trial or some subsequent trial without any undue delay.

He advised me to make this aware to all of you, and to advise you of it. That is where we stand.

I know it is somewhat irregular as to procedure, but substantively I think we can protect your client's rights. I will see to it that their rights are protected. Accordingly, I think we should proceed at least with the Plaintiff's opening of its case.

MR. SHAW: Your Honor, I just want to make one statement for the Union. What we are seeking is rejection. The application is one, briefly, as I said by Order to Show Cause and now by summons and complaint to reject the contract.

Counsel speaks about a counterclaim. I think that so that we can be helpful at least give him the proper due that he is due, I think he should file a claim as an administrative expense or as a general claim because no counterclaim could be decided here in these proceedings unless he has filed a claim to begin with or there should be other ways of doing it.

Counsel, I will be glad to talk to you about it procedurally. That is, what he should go in for, which is the amount he is seeking, your Honor.

I am suggesting that should he file a claim with the Court I could then come in at the proper time and take exception to the administrative claim or the general claim and not now to put both of them on. To put both of them, you are mixing apples and oranges, because you have an equitable problem, the question of the right to disaffirm the union contract; whereas you are coming for the dollar amount, which is as you should be entitled to do, but that should not be determined at this time.

THE COURT: I did not hear any definitive statement as to what counterclaim he has in mind, so I would not assume that it is a matter of money damages. [Of course, he has the right to file his claim even after confirmation.]

MR. SHAW: I understood that it was money damages.

MR. MANGAN: There was some discussion between Mr. Shaw and myself on Friday where I indicated that it had been brought to my attention that monies due and owing to the health and pension fund that is jointly administered, one party being Local 807, that there is money due for the period between July 1st and July 18th of 1975 as well as contributions to those funds for vacation money that was paid during the course of the Chapter XI period.

I specifically did not refer to the type of counterclaim because I am not certain at this point what that counterclaim will be or if there will be one. It is really, one, to research the facts of law to determine what should be interposed on behalf of my client.

THE COURT: With reference to any

administrative claim that you might have, you can move for payment without any further delay. You are entitled to payments. If it constitutes an administrative claim, it should be paid by the Debtor in possession. You should compute whatever you conceive to be an administrative claim; that is, for any services or any rights that these drivers were entitled to subsequent to the filing, and I will direct payment if it is a bonafide claim without waiting.

MR. SHAW: That is just what I wanted to advise him.

MR. MANGAN: Very good, sir.

MR. SHAW: I thought a counterclaim for money is what he was putting in.

THE COURT: You will have thirty days following, but you should do it before the filing of any claims that you may have which is general priority, secured or whatever --- contingent, liquidated, unliquidated --- you should be thinking of that procedure, also.

MR. MANGAN: Thank you.

MR. SHAW: I would assume you would abide by the decision of this Court. It would be a question of determination, when the determination would take effect.

As I understand it, we will continue, we will get an adjourned date acceptable to Mr. Mangan and then continue with his Answer and then his discovery.

THE COURT: I really see no prejudice, Mr. Mangan, if we adhere to the mandate of Judge Mishler and proceed and get this trial going.

I assure you, again, that all of your rights will be protected by this Court with reference to your defense or any counterclaim that you may wish to impose.

MR. MANGAN: Thank you, sir.

MR. SHAW: I call our first witness, Mr. Binder.

* * *

JOSEPH BINDER, residing at 506 Links Drive East, Oceanside, New York, being first duly sworn by the Bankruptcy Judge, testified as follows:

THE COURT: May I just preface the commencement of this testimony by stating that I assume you're all quite familiar with the Kevin Steel case and the requirements enunciated by the Circuit Court with reference to what has been proven. Let us stay within those parameters as far as it is possible.

MR. SHAW: In reading the Kevin Steel case --- Your Honor, I would like to address myself to that for a moment --- there is nothing definitive. The Court said it is not on financial alone. It remanned it back to the District Court and it will probably be remanned back to the bankruptcy court to take other testimony. We've got to understand that will probably be one of the first cases on this issue, and the actual criteria has never been laid out.

In Kevin Steel the criteria is other than financial, but it did not eliminate the financial aspect on the Debtor, but it said other criteria and it should not have been arbitrarily used to reject the

Union contract.

I am glad you brought it out, because you cannot stick to a point you do not know what it is. However, I think the background of Bohack is an extremely important factor and its background during the Chapter XI, and to begin with I am going to elicit that testimony now.

THE COURT: In my opinion there are two criteria: Financial and equitable.

MR. SHAW: Exactly.

THE COURT: Now, there may be a composite.

MR. SHAW: Exactly.

THE COURT: That might be simplistic, but basically what we are concerned with here is a financial burden and that is your proof. You have the onus of proving that it is a financial burden, that it is onerous ---

MR. SHAW: Yes, sir.

THE COURT: --- and that it may preclude your ability to rehabilitate.

MR. SHAW: Exactly.

THE COURT: Consonent with that, we are concerned with what the equities are. Is it more equitable to continue the contract or is it more equitable to reject it?

So, you have as I see it two basic elements of proof, but with variations of those two essential requisites.

All right, you may proceed.

DIRECT EXAMINATION

BY MR. SHAW:

Q Mr. Binder, how long have you been with the Boback Corporation?

A Ten years.

Q What was your function and title during that ten-year period?

A I came in 1966 --- 1965. I came as Financial Vice President.

In 1966 I was elected President of the Boback Corporation.

I remained in that position for some months subsequent to the filing of the Chapter XI proceeding. At that time I assumed the Executive Vice President of Operations.

Q Your position now is that of Executive Vice

President of Operations; is that correct?

A That is correct.

Q Let me go back. Before July 31st, 1974, which was the date when the petition was filed in this Court, and I bring you back to January 1st, 1974, I am going to ask you how many stores did the Bohack Corporation have?

A In January of 1974, Bohack had one hundred and forty-one supermarkets in operation.

Q Sometime prior to the filing of the Chapter XI proceeding, did you close any of those one hundred and forty-one stores?

A About a month or so prior to the filing of the Chapter XI, we closed some place between fifteen to twenty stores.

Q How many stores did you have then on the filing of the Chapter XI proceeding?

A I would say some place in the area between a hundred twenty and a hundred twenty-five or a hundred thirty. Some place in that area.

Q Could you for the benefit of the Court describe the operation of the Bohack Corporation on January 1st, 1974? Tell me what the difference was, if any, between January 1st, 1974 and the date that you filed the petition with respect to the business itself. How did you operate then and how did you operate September 1st differently, if any?

MR. MANGAN: Those are two different questions, Your Honor. First of all ---

THE COURT: The objection is as to form, and it is sustained.

A What we did ---

THE COURT: Sustained.

MR. SHAW: Don't answer.

Q On what concept did you operate the Bohack Corporation?

MR. MANGAN: When? On January 1st?

Q On January 1st.

A It wasn't a concept, but I will give you the method of operation that we operated in supplying our one hundred and forty-one supermarkets.

Prior to January '74, at one point, Bohack had over two hundred supermarkets.

Basically, Bohack occupied space in the real estate complex known as Bohack Square in Maspeth, Brooklyn.

We had a three hundred five thousand foot grocery warehouse. We had a meat warehouse; a dairy warehouse; produce warehouse; and a delicatessen commissary. All of these items were warehoused in Bohack's warehouse.

Bohack had its own fleet of trucks that ran in the joint venture with a company called the Truck Fleet of New York, which at one point was partially owned or the majority of the stock was owned by Leaseway of Cleveland. Subsequently, Bohack obtained all the trucks of Leaseway of Cleveland and it became a wholly owned subsidiary of Bohack.

This method of operation of a chain having its own warehouse is opposed to the operation of other chains which do not have warehouses, but are supplied their items direct to a store by wholesalers, by the wholesaler's trucks and by the coming out of the wholesalers own warehouses.

Q What you are saying is that you are operating under a concept of or the method of operation --- if I am correct --- where you stored in your warehouses meats, deli, produce and groceries; is that correct?

A That is correct.

Q Could you tell me the percentage, the physical percentage of the Bohack compound or terminal that Bohack itself used?

A A guesstimate I would say, approximately fifty percent in intra-company transaction.

Q Could you tell us how much of that fifty percent was an expense to the Bohack Corporation, by way of mortgage payments, by way of rents, by way of lease?

A The Bohack operated portion of the property would contribute about a comparable amount to the interest, mortgage and expenses or running the terminal. It was on a prorata basis.

Q Could you tell me approximately how much that was?

A I would think it is in a figure of in excess of a million dollars a year, but probably closer to a million and a half a year. I do not have the exact number, but that can be verified.

Q Is that the actual cash flow ---

A Yes, dollars.

Q --- that Bohack would pay and still pay to the bank for interest, amortization or to taxes, whatever?

A Yes, and it goes toward services, to the maintenance of the building, the electricity and the running of the terminal, and the interests and mortgage payments.

Q I direct your attention to July 31st, 1974, when you entered and filed a petition here. Were you still with the same method of operation, warehousing all of your meats, deli, dairy, groceries and produce?

A Basically, yes.

Q When you say basically, what was the variation?

A The variation was the grocery warehouse was not full of groceries.

Q But were you operating from it?

A Yes. Because our credit was cut off substantially from manufacturers ---

Q I just want you to answer for background for the Court. Tell us do you recall the date when you filed the Chapter XI proceeding or sometime shortly thereafter that an agreement was made with Manufacturers Hanover Trust that they would loan money to Bohack on a two to one ratio, open credit, credit to suppliers. They would give two to one in dollars to cents, so there was credit and supplies. Was that basically what the agreement was?

A When we filed the Chapter XI, at the outset Manufacturers Hanover Trust Bank in giving us the DIP terminal took a lien on the entire company in addition to the inventory.

At the behest of the Creditors Committee within a few days after the signing of the original DIP terminal agreement, the Creditors Committee was instrumental in having the bank lift that portion of the lien and releasing the inventory, to free the merchandise to the creditors that were shipping to us during the Chapter XI with the hope that the creditors would give us a two to one ratio as far as credit and we could also look for them to free their inventory to ship to us.

MR. DUBERSTEIN: Excuse me, but would you please set for the record what you mean by two for one so the record can be clear, quite clear as to what you mean by that.

THE WITNESS: The banks of some of the larger wholesalers were offering certain letters of credit. That if the bank gave a letter of credit, for example, in the amount of a hundred thousand dollars to a supplier, the bank was hopeful that the supplier would give us two hundred thousand dollars of credit or of a hundred thousand dollars of exposure.

Q That was still within the confines of the same operation, warehousing as I would call it; is that correct?

A At this point as I said the grocery warehouse was being rapidly depleted.

What we were doing was getting bulk loads of merchandise from wholesalers delivered to the grocery warehouse in an attempt to keep it operating.

Q The same concept of warehousing your stock and having your trucks deliver to the stores; is that correct?

A On filing of Chapter XI, around July '74, yes.

Q Did there come a time subsequent to the agreement with the bank and the Creditors Committee where they released the inventory, where you found out that the credit that was supposed to be given or hopefully to be given by suppliers diminished to a low point?

A It never diminished. It never changed from the prior filing of the Chapter XI. We just couldn't get any credit. What I mean, we could get a nominal amount of credit, but we were on COD, wired monies. Basically, we were paying for the merchandise, but before we sold it, which is not the concept of retail.

Q At the many Creditors Committee meetings that were held were there any mandates given by the Creditor Committee, vis-a-vis, the terminal lien?

A If you will remember at each Creditors Committee at the end of each Creditors Committee meeting the members, the eleven man body creditors, usually at each meeting had a vote as to whether they should have an indemnity bond, which is putting us almost in a Chapter X liquidation --- and sometimes in the past the vote came extremely close --- but many times they would close with the mandate if we did not get profitable quickly, that would be it, Bohack would be out of business.

With the help of the accountants for the Creditors Committee and members of the Creditors Committee, every portion of operations was locked at. We started to close up profitable stores.

If I could take a little time out I could explain this whole period.

Q Take your time.

A We closed substantially to the point where we are now, we are at seventy-two stores.

THE COURT: Will you fix the time from when you started this operation for this, pursuant to closing stores.

A Part of it started in June, July of '74, but the heavy amount was again in November '74 and then followed thereafter.

However, a large amount of stores closed in November 1974 as a result in a warehouse operation.

The key to a profitable warehouse operation or even a break even warehouse operation is volume.

Bohack grocery warehouse needed something like two hundred thousand cases a week to break even.

Presently, for example, we take from two grocery wholesalers, about ninety-five to a hundred thousand cases a week of groceries.

The stores were depleting. Basically, they were in half. The meat warehouse was losing money; the delicatessen commissary, produce and the dairy, et cetera. It just became an un economical operation.

The negative cash flow from it was draining us and we were having less and less merchandise in our stores. Our volume was falling off.

Q Do you recall any mandate by the Creditors Committee, vis-a-vis, a drain on the terminal?

A The Creditors Committee mandated us to get rid of Bohack Square under the penalty of an indemnity bond or going into a Chapter X.

MR. DUBERSTEIN: He doesn't mean a ten, he means liquidation.

THE WITNESS: Excuse my lay terms, but we were to get rid of it.

Q When the Creditors Committee mandated the closing of the terminal, and you were getting rid of the terminal because of the drain of which I think you said a drain of approximately a million dollars--- am I correct in saying that?

A In excess of a million dollars.

Q Do you recall that you were in default at that time with respect to the first mortgage held by the Brooklyn Savings Bank?

A Yes. At the same time, the mortgagee for the first mortgage, which was the Brooklyn Savings Bank, and four other Savings Banks commenced foreclosure proceedings against the terminal.

Q At the time there was a mandate to get rid of the terminal and to operate as a supermarket business, do you recall that the Brooklyn Savings Bank named me as Trustee pursuant to the Court to take in the rental from the other tenants and to account to them for every dollar and pay out; do you recall that?

A Yes.

Q And up to today that is still going on; is that right?

A Yes.

Q Then let us fix the time when you ultimately came down to the__ seventy-two stores. Could you give us the chronological events from the date of the filing of the petition, the dropping of the stores, to ultimately seventy-two --- Your Honor asked you that before, the seventy-two that you have now.

A I will work through the warehouse, hopefully, and the stores at the same time.

Now, first as to the stores, the stores started to close during the latter part of the summer and the fall of '74.

I believe the first thing we did was to take the produce and dairy operations and close that, we moved that to a wholesaler. I believe at that time it was Shopwell.

It was our intention at that time to try to keep the grocery warehouse and the meat warehouse open, [we were trying to get the volume to flow through that.]

Sometime during the end of 1974 as the stores started to close and we could receive basically no credit from the grocery manufacturers, it was decided to close the grocery warehouse at that point and to take out dry groceries from two wholesalers, namely, Bozzudo's in Connecticut and Filigree Foods in Totowa, New Jersey.

Up to that point, Bohack's 807 drivers had been going to Bozzudo to pick up loads and bring these loads of groceries to Bohack Square.

Then other 807 drivers would deliver to the stores.

Q Am I correct in stating, Mr. Binder, that the profits made by the bank for the two to one ratio, that Mr. Duberstein spoke to, that never came into existence; is that correct? That the creditors never really delivered?

A Not the profit, but the hope.

Q Not the profit, but ---

MR. MANGAN: I object at this time because now it becomes counsel's testimony ---

THE COURT: Sustained.

MR. MANGAN: --- instead of the testimony of the witness.

THE COURT: Sustained.

A As I stated before, we never ---

MR. MANGAN: I do not know if there's any question before the witness.

THE COURT: No, you don't answer.

Rephrase your question, Mr. Shaw.

Q You understood what Mr. Duberstein asked, to determine what the two to one ratio was. Do you recall that?

A Yes.

Q What was your explanation, if you do not mind repeating.

A Basically, for every dollar of letter of credit the bank would put up, the creditor would put up two dollars of credit.

Q Did that ever happen?

A The banks had two parts. They put up some letters of credit and these were directed to banks, and this happened, but by releasing the inventory on the lien for the banks in the hope that the other merchandise creditors, mainly the wholesale manufacturers would do it, that never happened.

Q That never happened, so you could never ship to your warehouses ---

MR. MANGAN: Objection. It is not in the form of a question. It is in the form of a statement by counsel.

THE COURT: Sustained.

Q As the result of their not coming up with the credit, what happened, physically, to your warehouse?

A The out of stock in the grocery warehouse was running fifty, sixty percent out of stock. As a result, the store shelves were depleted. As they ordered, the warehouse could not fill orders because we could not get merchandise, from manufacturers because their credit was not opened and the only cash we had available was from the DIP terminal at that point.

Q There came a time I think ---

MR. MANGAN: Could we have an explanation, Your Honor, of DIP terminal?

MR. SHAW: Debtor in Possession term loan.

For Mr. Mangan and the record, and I do not think I am out of place to so advise, but it is a fact that when Bohack went into Chapter XI Manufacturers Hanover Trust gave a Debtor in Possession term loan the maximum of five million dollars to Bohack to aid them through this Debtor in Possession period.

It was predicated initially on the fact that they had a lien on everything, including the inventory. It was predicated on that particular fact.

Then the Creditors Committee came in and said that they would not ship at all if that lien on the inventory and all assets of Bohack continued.

That Debtor in Possession term loan agreement was modified to the extent and at the behest of counsel for the Creditors Committee that the inventory be released from the lien so that creditors at least if they shipped on a two to one basis had security in the inventory. That is how it was modified with, again, the maximum of five million dollars to be loaned by the bank. That is basically what it was, and that document is on record filed and approved by the Court and the Creditors Committee, the modification agreement thereof, and you can look at it, I am sure.

Q Mr. Binder, before I go any further, could you tell me two concepts or three or four concepts if any, of a type of doing business in a supermarket of your caliber?

A I assume you mean those chains that do have wholesale --- who have their own warehouses and those that don't?

Q Yes.

A As I stated before, in order to have your own warehouse you must have the volume. If you do not, the costs are astronomical as the costs goes with it.

There are many chains that do not have their own warehouse.

Q Could you name some, please?

A They either belong to cooperatives or a wholesaler, et cetera. You have Sloane's, The Shoprite group, for example, they don't have their own warehouse.

Many of the Key Foods and Associated, Royal Farms. It comes to that point --- well, I think Gristede's is now taking from a wholesaler. It doesn't become economically feasible to have your own warehouse unless you have volume to generate it.

Q So when Bohack closed its stores, its volume, of course, depleted.

A You have now Bohack, but you used to have Bohack which was a large, major supermarket chain in the New York City area. You now have a regional chain of seventy-two stores. That is someplace above an independent chain, but it is not quite considered a supermarket chain in its fullest sense at this point because of its Chapter XI proceeding.

Q Could you tell me about the difference in volume in what you are doing now and what you were doing in January 1st, 1974?

A We did approximately in '73 - '74, prior to the filing, I would say --- I would think about three hundred million dollars per year. Now we probably do more like a hundred sixty million dollars a year or sixty-five million dollars a year.

Q That is gross volume on the stores?

A Right.

Q You referred to the Shopwell agreement as your first step in order to alleviate yourself of the problem of the warehouse; is that correct?

A Our first move was to give the produce and dairy operations to Shopwell.

Q How was that done?

A At the initial negotiations we were still trying to keep as many people from the 852 warehouse union working as well as the 807 deliveries as a part of our negotiations with Shopwell, which you can determine from the Shopwell people if necessary.

However, under no circumstances would they ship any produce or dairy unless they can do it with their own people.

Q Did you ever ask them to use 807 people?

A Yes.

Q What was their response?

A They weren't interested in having 807 coming up there. They had their own union and they did not want --- they had enough problems without getting involved with another union, in having another union come in there.

Q Did you indicate that if they would not ship ---

MR. MANGAN: Objection.

THE COURT: Sustained.

Q What conversation did you have with the President of the Shopwell people with respect to 807?

A At one point I requested of Mr. Marchand Rosengarten, who is the President, to allow 807 to come in there with Bohack equipment and have his warehouse people load the trailers but have Bohack men pull the trailers out of there, which would be Local 807, but he absolutely refused.

Q You only took produce and perrishables from Shopwell?

A And dairy.

Q So that would be produce and dairy. How about delicatessen?

A The delicatessen and meat warehouse was still kept open at Bohack Square, where the products were being delivered by 807 as well at this point the grocery warehouse was open.

Q So you had the grocery warehouse still open and you had the meat warehouse still open?

A That is right.

Q At what point in time did you close the grocery warehouse?

A The exact date eludes me, but I would believe it to be someplace around the end of 1974.

We started to take our groceries at that point from Bozzudo and Filigree.

At that point 807 was still delivering our groceries under an agreement with Filigree where they would load trailers and 807 drivers would go and pick it up. The same thing happened with Bozzudo.

Subsequent to that, again the cost of prodding and the mandate of the Creditors Committee to get my costs down, we were looking into the costs --- what we had done is that certain Bohack 807 drivers every night would go up to Bozzudo's and pick up a load of groceries and bring it back to Bohack Square and other 807 drivers would deliver it to the stores.

Two things started to happen at that time. The cost for this operation of going up and coming down and then going to the stores was substantially in excess as to what it would normally cost a wholesale grocer to deliver to our stores directly and, plus, the banks foreclosing proceedings on the terminal, we are now in the period of time that we were not able to use Bohack Square for a storage area, plus the fact it was costing the extra dollars for bringing down the load of groceries from Connecticut to Bohack Square.

I made a new arrangement with Bozzudo because I had a problem in the sense of the growing cost of my drivers going up to Connecticut and, then, he too started to have a little problem with his union up in Connecticut.

MR. MANGAN: Objection.

THE COURT: What is the ground for your objection?

MR. MANGAN: That it is irrelevant.

THE COURT: What did you do predicated thereon?

THE WITNESS: This was in discussion with Adam Bozzudo.

THE COURT: Overruled. I will allow it.

A I made a new arrangement for "X" amount of deliveries. They would now deliver the groceries to the Square and then 807 drivers would take it to the stores.

Q How long did that continue?

A A couple of months, I would think.

Incidentally, during that period of time the Filigree people --

MR. SHAW: I will withdraw the question.

Q You haven't finished your last answer?

A No, I haven't.

I just wanted to finish my trend of thought.

I had orders from the accountants for the Creditors Committee to get my cost down more, plus now had the banks foreclosing proceedings on Bohack.

At the same time, Filigree, whom I was getting groceries from and 807 was picking up, Filigree filed a Chapter XI. So I found myself with the problem of finding another wholesaler as Bozzudo couldn't take any more volume. I had to get another wholesale grocery.

I got Krasdale, which is up in Hunts Point, the Hunts Point section of the Bronx to supply about thirty stores with groceries, which basically was what Filigree was supplying.

Again at that point I figured I would switch over the trucking which was going to

Filigree, I would switch them right over to Krasdale and have them be loaded by Krasdale's union and delivered by 807 drivers. But there I ran into the same problem with Krasdale, the same problem which I ran into with Shopwell.

Incidentally, just for the record, Shopwell's fresh counter operation is next door to Krasdale's operation in Hunts Point. I'm talking from the union's point of view.

Krasdale absolutely and unequivocally refused to let any of my trucks go in there, let alone allow a driver to come over to his warehouse.

His method of operation is he gives you a finished delivery cost to the stores and that is the only way he will do business, but we negotiated a letter of credit from the bank, it was one of those eleventh hour negotiations because Filigree had closed down without any notice.

Q Was there any major wholesaler in the City of New York or Connecticut that could supply you with groceries?

A I was talking to Associated Foods to supply us and then they filed a Chapter XI.

Then I also spoke to Met Foods and their President then, not their present President, not Mr. Daney (phonetic spelling) but his boss Charles Naser, and he refused to ship meat to me because of the credit situation and his nervousness with Bohack.

Q Would I be correct in saying if you did not deal with Krasdale you would not have received groceries for your stores?

MR. MANGAN: Objection.

THE COURT: Sustained, as to form.

Q Was there any other place that you could go to other than Krasdale to receive wholesale groceries?

A Since basically meat stores had turned me down, which was when Associated went into Chapter XI, there was really no place I could go at this point.

Q What would happen?

A If we didn't have groceries in the stores, there were empty shelves then we were just out of business.

When you say out of business, you mean what?

A Our volume was falling off substantially.

We were trying to re-group from our out of stock but once you lose the customer, the customer's pattern of operation of coming into your store, is quite hard to get them back. We didn't have heavy dollars to go into a wild advertising campaign to pull in the customers, to get the customers back.

Q Just tell the Court what you meant when you said you had no grocery on the shelves.

A We had actually no groceries on our shelves and our volume was falling off. Don't forget, we were losing money all through these months and we were attempting to turn the company around and operate a supermarket without groceries in its warehouse. On top of all of our problems and this was very sticky. We went through some extremely hairy months. In fact, for over a year it has been hairy, but it is getting much better now but we have been through some serious moments there at times.

Q After all of this with respect to Krasdale and Met Foods and Associated and Filigree and Bozzudo, were you advising the Creditors Committee of this at all times?

A Always.

Q At each Creditors Committee a full report was given?

A Absolutely. It was always on the agenda.

Q Am I correct in stating that the direct credit from Manufacturers Hanover Trust to you would be zero?

MR. MANGAN: Objection.

THE COURT: Sustained.

Q How much was the credit you were receiving from direct suppliers?

MR. MANGAN: Your Honor, at this time Mr. Shaw has been making the same approach. He asked an obviously objectionable question, he gets a sustained ruling as to the objection, and then come back and he has already suggested the answer to the question. He is telling the witness what the answer is going to be although he recognizes the objection from counsel which is sustained by the Court and then comes back and says: Well, what was it.

THE COURT: There is merit in what counsel says, Mr. Shaw.

MR. SHAW: It is not being done intentionally, Your Honor.

THE COURT: I do not think it is intentional, but it is having the same effect. Consider your questions a little more carefully.

MR. SHAW: Also, I want you to understand there is no jury here.

MR. MANGAN: But there is a record.

THE COURT: You're making statements which suggest answers to the witness and all of that is improper.

Q Did there come a time when you stopped doing business with Shopwell?

A Yes. There came a point when I --- first, because of the method of operation of Shopwell and some of the costs, we took out our dairy business and gave it to Royal Dairy in New Jersey, which was a wholesale dairy.

At one point we closed up our meat warehouse and gave the meat volume to Shopwell, so that Shopwell at one point was doing our meat produce and our deli.

Subsequent to that we made a new arrangement, to take our perishable business to Hills Supermarket in Brentwood, but basically because of commission.

Q So could you tell the Court with whom now you are dealing with for wholesale and for what profit?

A From a grocery point of view, it is Bozzudo. Krasdale, it is Krasdale in dairy. For meat produce and deli, it is Hills in Brentwood. For frozen foods, it's Global Frozen Foods, plus all the other direct vendors who take deliveries direct to the stores.

Q Other than direct vendors who deliver direct to the stores, could you tell us whether there are any outstanding letters of credits to the wholesaler by the bank?

A They are to Bozzudo, Krasdale, Royal Dairy, Global Frozen Food and Hills Supermarkets. Those letters of credit are given by the bank, Manufacturers Hanover Bank in the amount totalling a million five hundred thousand.

Q Did there come a time when Bohack subsequently vacated the terminal at all?

A As I said we realized that the savings bank had started foreclosure proceedings plus looking at the costs of operating Bohack Square, it was determined after the last warehouse closed that the cost of running the office and the data processing there was also prohibitive.

What we did, we moved the office and data processing on a much reduced basis to a space over a supermarket in Little Neck, Queens, on Northern Boulevard at no rent to the company.

The rent, of course, was being absorbed as a part of the total store operation, in the sense of a dollar cost of running that entire location, that did not increase because the rent was being paid for the storage area for the store had an excess storage area and we utilized it for new office space.

Q Did there come a time as a result of the closing of these stores that you had an excess of any equipment, trucking equipment?

A I did a little survey over the weekend.

On July, 1974, we had approximately two hundred and thirty-six pieces of equipment, which comprise of trailers, tractors, straight jobs.

Presently we have in an idle condition that equipment that we haven't sold outright at this point or leased seventy-nine pieces of equipment of which are all going to be sold at a truck auction. An auction, that is being arranged at this time by Leaseway of Cleveland for me but in conjunction with Bohack. This auction should happen before the end of the year.

Hopefully, by the end of the year, this equipment that is owned by Truck Lease of New York, which is a subsidiary of Bohack, will have no equipment in its own name except that portion which it does lease out.

Q What portion does it lease out and to whom it leases out?

A Right now, sixty-four pieces of combination trailers and tractors. Approximately thirty-two tractors, thirty-two trailers to Hills Supermarket for the haulling of our perishables.

We attempted to sell that equipment outright to Hills, but Hills would not buy it. The only method that we could arrange with Hills was a leasing operation. It is a straight finance lease where Bohack does not maintain the equipment, does not handle it. It is a straight finance lease.

Q Are there any restrictions on Bohack predicated on their leasing the equipment to Hills?

A The lease allows us to have the equipment necessary you know to deliver to the stores. It also gives us the cash flow that is necessary to pay the notes off on the equipment.

This equipment is not free and clear. It is a combination of notes out to either Clarke or Great Dane Highway Equipment.

Q Is there any liability on those notes?

A Bohack is guarantor on most of the equipment.

Q Do you know the President of Hills, with respect to Hills?

A I do not know who the President of Hills --- I do not think Hills has a President.

MR. SHAW: Withdrawn.

Q Do you know the Chairman of the Board?

A The Chairman of the Board of Pueblo is Harold Tom, and Hills as I understand, is a subsidiary or division of Pueblo.

Q Did you have any discussion with him with respect to Local 807?

A Yes.

Remembering, that at all times we tried to keep the 807 drivers working. We tried to do this. We went to Shopwell. We tried to work it, to move the groceries through them to keep 807 working. We had gone to Filigree and we tried to keep them working. [We kept the meat part open longer than we could afford to do so to keep them working.

As far as Bohack's management is concerned, it would make no difference to us if we hadn't kept them, but for our own morale we did try to keep them, but now we cannot because we have no control over our destiny and we have to get the merchandise from whoever will sell to us. We are small now, we are no longer a large power we cannot say: No, you can't do this because we won't do that. We can't do that anymore. Now, we have the same thing with Hills. It is the same problem and Hills has told us that they have their own problems right now and to have another union is the last thing that they want now. I got the same answer from them as I got from Shopwell and from Krasdale: No way does anybody deliver those groceries to the stores except by their own drivers because they have enough problems in the warehouse as it is, and it was a different Teamster Local.

Q Assuming this lease is disavowed as being onerous or burdensome ---

MR. SHAW: Counsel, do you have a copy of it?

MR. MANGAN: I'm not sure.

MR. SHAW: I have one here, but there is a piece of it that we pulled out.

I would like to have this marked in evidence if I may with the understanding that I will provide the Court and the parties with a complete copy.

MR. MANGAN: All right.

MR. SHAW: I would like to have marked as Plaintiff's Exhibit 1, Judge, the agreement which is the National Master Freight Agreement in the New Jersey - New

York area general trucking and supplemental agreement for the period July 1st, 1973 to March 31st, 1976.

Q Mr. Binder, is this the contract of 807 as you know it ---

A Yes.

Q --- the supplementary agreement is missing.

A There is a supplemental agreement.

MR. SHAW: Your Honor, I will furnish that at the next hearing. I would like to mark this as Plaintiff's Exhibit 1.

THE COURT: Do you have any objection?

MR. MANGAN: No objection.

THE COURT: To clarify the record does this consist of the general trucking agreement and the supplemental agreement to it?

MR. SHAW: Yes. That is my understanding.

THE COURT: Or is it without the supplemental agreement, but the original contract which was entered into?

MR. MANGAN: Your Honor, the collective bargaining agreement between Bohack and

Local 807 has three parts. One would be the National Master Trade Agreement, and that would cover I think ---

THE COURT: Is that what we have here, Mr. Mangan?

MR. MANGAN: I am referring to the three parts, and I can indicate where they are in the green booklet that you have before you.

The first thirty-nine Articles are referred to and known as the National Master Freight Agreement.

From Article forty through Article sixty-eight and the various appendices are included within that bound volume, which would be the New Jersey - New York area general trucking supplement to that National Master Freight Agreement.

In addition to that there is a Local 807 rider, which is what would be stapled in to the last page which is being referred to in that fashion by Mr. Shaw.

THE COURT: Would this constitute what you are making reference to?

MR. MANGAN: Yes. That is all three parts.

THE COURT: All three elements.

MR. SHAW: For the sake of the record, would you mind if we marked, marked them independently so the record would be clear?

THE COURT: Well, this is attached to some papers in the file.

MR. MANGAN: I would have no objection.

MR. SHAW: Your Honor, the paper that you have before you is Mr. Mangan's papers, I would assume --- or, is it?

MR. MANGAN: I believe those are the papers.

THE COURT: This is an Order dated July 18th, 1975, Order to Show Cause, brought by the Bohack Corporation.

MR. SHAW: If I may, Judge, see that?

(Handing.)

MR. SHAW: I would like to have this marked, too.

(National Master Freight Agreement, New Jersey - New York area general trucking agreement - received and marked Plaintiff's Exhibit 1 in evidence, as of this date.)

MR. SHAW: Your Honor, we have just marked as Exhibit 1, the green booklet.

I would like to now have marked as Plaintiff's Exhibit 2 that which is annexed as Your Honor indicated to an Order to Show Cause, dated July 18th, 1975, brought on by the Bohack Corporation, mark it as Exhibit 2.

Mr. Mangan, if you do not mind, will you give me a hand with this?

MR. MANGAN: Sure.

MR. SHAW: How would we word it, 807's portion of contract?

MR. MANGAN: That is right.

MR. SHAW: That it consists of four pages --- or is it three pages?

THE COURT: You wouldn't refer to it as a contract, I think that is a rider; is it not?

MR. SHAW: A rider.

MR. MANGAN: What you have is four pages.

May we go off the record, Your Honor?

THE COURT: Off the record.

(Thereupon, a conference was held off the record between the attorneys for the respective parties and the Court.)

THE COURT: Back on the record.

MR. SHAW: Your Honor, can we mark as Exhibit 2, the executed 807 portion of the National Master Freight Agreement of July 1st, 1973, consisting of two pages.

THE COURT: We can have that deemed marked in evidence as part of the Court's record, as it pertains to a filed paper.

MR. SHAW: Yes, sir.

THE COURT: We will have it deemed marked in evidence.

MR. SHAW: Deemed marked as Exhibit 2.

(Supplemental Agreement to National Master Freight Agreement, New Jersey - New York area - deemed received and marked as Plaintiff's Exhibit 2 in evidence, as of this date.)

MR. SHAW: Your Honor, also we would like to have deemed marked as Plaintiff's

Exhibit 3, the execution pages and a cover page of the National Master Freight Agreement, dated July 1st, 1973.

THE COURT: So deemed.

(Execution pages anda cover page of the National Master Freight Agreement, New Jersey - New York area general trucking agreement - deemed received and marked Plaintiff's Exhibit 3 in evidence, as of this date.)

THE COURT: Let the record show that this Exhibit was submitted with an Order to Show Cause brough on by the Debtor in Possession, dated or executed by the Court July 18th, 1975.

Gentlemen, we will take a recess.

(Thereupon, a recess was declared at 11:20 a.m.)

(At 11:30 a.m., the proceeding resumed.)

THE COURT: Let's proceed, gentlemen.

MR. SHAW: Your Honor, I have gone as physically as far as I can go, but with your permission Mr. Shea, from the firm of Kelley, Drye and Warren, shall pick up from here.

MR. MANGAN: I have no objection.

THE COURT: Surely.

MR. SHEA: I would like to have these marked for identification, as Exhibits 4-A, 4-B and 4-C.

(Document - marked Plaintiff's Exhibit 4-A for identification, as of this date.)

(Document - marked Plaintiff's Exhibit 4-B for identification, as of this date.)

(Document - marked Plaintiff's Exhibit 4-C for identification, as of this date.)

DIRECT EXAMINATION

BY MR. SHEA:

Q Mr. Binder ---

THE COURT: Would you identify for the record what was marked for identification and for the benefit of the opposing counsel.

MR. SHEA: Surely. We have marked

as Exhibits documents, which are 4-A, 4-B and 4-C, computations that show a projected savings from the total disavowal of the 807 contract in various categories of breakdowns.

This is in the main limited to operation savings as I think we will bring out on examination.

Q Mr. Binder, I show you Exhibit 4-A, 4-B and 4-C for identification. I ask whether you had anything to do with their preparation. If so, will you explain what your participation was?

A I helped in the preparation of these three Exhibits with the assistance of our Accounting Department at Bohack and the traffic and warehouse people at Bohack.

The three tables are basically projected savings in the closing of our grocery warehouse. The title is called: Projected Savings for Total Disavowal of Local 807 Contracts, Delivery of Groceries.

The other two schedules are the savings from the disavowal of the Local 807 contract for meat, delicatessen and produce drivers costs. The other is equipment costs, warehouse costs, et cetera.

These schedules were prepared by me and my accountants and other people at the behest of our attorneys as a part of those moving papers.

Q Over what period of time is this projected cost saving computed?

A I would believe it is approximately the prior six months.

Q I do not mean what figures it is based on, but what period of time does the Exhibits project?

A The savings?

Q Yes.

A I am sorry. On an annual basis going forward.

Q Drawing your attention to Exhibit 4-C. Are there any figures on 4-C that duplicate the figures on pages 4-A and 4-B?

A 4-B is the savings of the drivers costs alone on the disavowal of the meat, deli and produce portions of the 807 contract, which totals a hundred twenty-eight thousand one hundred dollars a year annual savings, by going from 807 drivers to drivers of other wholesalers.

Q Does that figure appear on Exhibit 4-C?

A It does. [illegible] part of the summary recapitulation on F[illegible] 4-C is on three parts, the savings of [illegible]s, which is a hundred twenty-eight thousand one hundred twenty is broken down on Exhibit 4-B plus an additional background on Exhibit 4-C of the savings of the rolling equipment for those perishable warehouse deliveries plus the savings of the warehouse, the warehouse savings of these perishables and warehouses. So it gives us a total savings on perishable warehouses and deliveries of four hundred and fifty-one thousand three hundred dollars on an annual basis.

Q Are there any figures on Exhibit 4-A that are included in that recapitulation?

A No. 4-A is a separate schedule which has nothing to do with the perishable warehouse savings of four hundred fifty -one thousand three hundred scheduled as savings strictly from the drivers for dry groceries out of the grocery warehouse, including equipment.

It shows that by moving out of Bohack's drivers, Local 807, of dry groceries and going to other wholesalers the savings on an annual basis to Bohack would be four hundred and fifty-two thousand ---

MR. MANGAN: Your Honor, counselor has asked the witness for the identification of the document. Counsel now has obtained an identification and the witness has indicated that he has prepared the document, but as far as the witness reading from that document, I think it has to be a document in evidence before it is permitted to be referred to by the witness.

THE COURT: I agree with that observation.

MR. SHEA: Your Honor, I do not take issue with counsel, but at the same time with respect to it I did want to bring out and I still want to bring out the relationship between the three before I offered them into evidence. I was not inviting him to read the figures, but I was inviting him to tell us to what extent there may be duplication among the three Exhibits.

THE COURT: Limit your answer to the question posed, Mr. Binder.

THE WITNESS: Schedule A, 4-A only shows the savings of four hundred fifty-two thousand four hundred dollars from the delivery of dry groceries as opposed to the perishable savings on the other two Exhibits.

MR. SHEA: I offer them in evidence.

THE COURT: Show them to counsel.

MR. SHEA: Yes, sir.

THE COURT: Any objection?

MR. MANGAN: Your Honor, I have no objection to the introduction, but without agreeing to any of the contents.

THE COURT: Mark them.

(Document - received and marked as Plaintiff's Exhibit 4-A in evidence as of this date.)

(Document - received and marked as Plaintiff's Exhibit 4-B in evidence as of this date.)

(Document - received and marked as Plaintiff's Exhibit 4-C in evidence, as of this date.)

Q Mr. Binder, I show you Exhibit 4-A, entitled Projected Savings from Total Disavowal of Local 807 Contract, Delivery of Groceries.

I ask you whether in any of the figures which appear on that Exhibit, is there any computation with respect to any warehouse savings?

A No, they are not. This is strictly for drivers costs, rolling equipment, the salaries of drivers and tools.

Q Are there warehouse costs involved in the operation of the delivery of groceries by Local 807?

A There is a grocery warehouse that backs up to the drivers from 807. There is a three hundred and five thousand foot grocery warehouse. There was another Teamsters Local, 852, and the cost of rent alone and taxes on that grocery warehouse, a three hundred five thousand warehouse, there was a figure in excess of --- with taxes, in excess of seven hundred thousand dollars a year.

These savings are not reflected on that. These are only drivers savings.

Q Would Bohack in fact save in excess of seven hundred thousand dollars a year in costs if it ceased to deliver groceries from its warehouse pursuant to its contract with Local 807?

MR. MANGAN: Objection. I think Mr. Shea is going into an area already covered by Mr. Shaw. I think what is happening is that some confusion in the record will occur at this point.

First of all, as it has already been covered by Mr. Shaw and by the witness, there is no collective bargaining agreement between Local 807 and Bohack covering the operation of the warehouse, and we should be confining ourselves to documents as prepared in dealing with the contentions of Bohack with regard to deliveries with the utilization of its own drivers under the collective bargaining agreement that the employer is seeking to reject and not get involved in warehousing.

THE COURT: Do you wish to be heard before I rule?

MR. SHEA: Yes. Your Honor, in order for the drivers to carry out their jobs under the contract with Local 807, a part of their job duties were the deliveries from a warehouse to our stores. Obviously, if we do not have to have drivers because we do not have Local 807's contract then we do not have to have the warehouse.

MR. MANGAN: Your Honor, that is neither correct ---

THE COURT: I do not think that follows logically.

However, I will overrule your objection and permit this subject to some valid connection.

MR. MANGAN: Your Honor, based upon counsel's offer of reasons as to why he wanted to go into this, that purpose is neither correct as a theoretical conclusion or as a factual statement and I think we have gone into this area during the course of the prior examination.

THE COURT: No.

MR. MANGAN: There is no reason, first of all, because 807 drivers were being utilized when the warehouse was not in operation, and those drivers could continue to be utilized without the warehouse being in operation.

THE COURT: Overruled.

You may answer.

Q Go ahead. You may answer.

A Could you repeat the question?

THE COURT: I refer you to Rules Seven, 704: Opinion on ultimate issue, which is Rule 704 under the Federal Rules of Evidence, "Testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of facts."

MR. MANGAN: Yes, Your Honor, that is exactly the point. The warehouse as we have covered earlier this morning was closed and the drivers continued to be utilized. It was never the contention of

807 that the warehouse had to be continued in operation. We did not come in seeking relief that the employer had to continue the warehouse operation.

THE COURT: I think you can develop your point of view on cross examination or through the direct testimony of your own witnesses.

MR. MANGAN: My point is limited to Mr. Shea's approach, it goes beyond the scope of the hearing that we have before us and beyond the collective bargaining agreement that is in issue and, also, this has been covered by Mr. Shaw in his questioning earlier this morning.

THE COURT: Nevertheless, I will permit it. If it is duplicated I will weigh that in my decision.

You may proceed.

MR. SHEA: May we have the question read, Your Honor?

THE COURT: Yes.

(Thereupon, the last question was read by the reporter.)

A Yes. The warehouse costs as I said before, the cost as we were talking about here excludes the cost of the warehouse as far as rent and taxes, which was the figure in excess of seven hundred thousand dollars. There are other costs involved as well.

Bohack considers its warehousing and trucking as one operation. We try with 807 and with those wholesalers that also consider their trucking operation but possibly a little separate from their warehouses to try to get 807 into these other warehouses, such as Filigree and Associated, but they both subsequently filed Chapter XI proceedings.

Now, the wholesalers that we purchase products now consider their warehouse trucking as one operation and they will not change it for Bohack or anyone else.

We feel that the loss of the control of the trucking loses control in the warehouse and that is the situation that we have, this is what we have with Shopwell and Hills, Krasdale, Royal Dairy. Et cetera.

THE COURT: Do you have that situation

with Bozzudo?

THE WITNESS: Bozzudo went along with us in the beginning, Your Honor, although they did want to deliver direct. However, at our behest they did do it. We must remember that Bozzudo was a substantial creditor of ours prior to the filing of the petition, in fact he was the only one who would allow us to go pick up our groceries at one point, but then he too started having problems and at a point he insisted that it could not be done that way and we had to stop as well, but with the others we never got to the first base with them.

Q So that the record will be clear, the amount of claimed warehouse savings in relation to the delivery of groceries is in excess of seven hundred thousand dollars and it does not appear on any of these Exhibits?

A That is correct.

MR. MANGAN: Objection. Leading. It is a conclusion of counsel.

THE COURT: Sustained as to form.

Q Does the warehouse savings on the delivery of groceries and warehouse savings for groceries appear on Exhibit 4-A, B and C?

A No, it does not.

Q Is that amount to be added to the total of 4-A, B and C?

A Yes.

Q And what is it?

A The rent and tax portion alone is in excess of seven hundred thousand plus the factor of electricity. It is probably a figure which is closer to a million dollars less that does not appear on schedule 4-A, B and C.

Q What is the figure for the total savings for the operation?

A If you include these three schedules ---

Q I am asking you to tell us what it is. Just tell us what it is.

A The drivers schedule, excluding the warehouses, is close to a million. About nine hundred and twenty-five thousand dollars.

If you add to it the grocery warehouse savings, you're having the figure close to two million dollars, which figure is necessary for a positive cash flow in order to get a Plan of Arrangement for this company.

Q What is the source of those figures?

A Our accounting records plus the negotiated figure with the wholesalers.

Q Your accounting records, basically, is the source of your testimony?

A That is correct. Yes.

MR. SHEA: I have no further questions.

MR. GOLDSTEIN: Your Honor, I have some questions.

THE COURT: Go ahead.

CROSS EXAMINATION

BY MR. GOLDSTEIN:

Q Mr. Binder, July 31st, 1974, the date of the filing of the Chapter XI and until the present, has Bohack continuously lost money during the Chapter XI?

A Up until the last month or two, the answer is yes.

Q Let me be more specific. Until July 31st, 1975, did Bohack loss in excess of ten million dollars during the operation of the Chapter XI?

A From what period?

Q July 31st, the filing, in 1974.

A Yes.

Q Did the Creditors Committee throughout these proceedings direct the Debtor that they must cut their losses and attempt to operate at a profit, otherwise Bohack could not continue?

MR. MANGAN: Objection, Your Honor.

THE COURT: Sustained.

MR. GOLDSTEIN: I withdraw that.

Q Mr. Binder, during the operation, during the Chapter XI, has Bohack found it easy to obtain merchandise on credit?

MR. MANGAN: Objection, as to form.

THE COURT: I sustain the objection as to form.

Q During the operation of the Chapter XI, has Bohack been able to obtain merchandise on credit?

MR. MANGAN: Objection.

THE COURT: Overruled.

A No. Bohack has gotten a nominal amount of credit. Usually, the merchandise that we receive during the week, say the period Monday through Friday is paid for either COD or Certified Check or by one or two or within a few days credit.

However, from an industry point Bohack is considered to having no credit in the industry.

Q Your Bohack present weekly sales approximate what figure to date?

A Say an average of about three point two million per week.

Q The influx of merchandise needed by the Debtor on a weekly basis to sustain three point two million dollars in sales is how much?

A Approximately eightypercent of that retail figure. Approximately two and a half million dollars a week.

Q Is Bohack receiving from the general trade body in the metropolitan New York market area supplies from manufacturers, goods which are available to other wholesale grocery chains, who pay on credit for merchandise?

A No. Bohack isn't.

Q Does Bohack have the ability now to pick up a phone and order merchandise on standard trade terms, standard being standard within the metropolitan New York market or the supermarket retail industry?

A No, it does not.

THE COURT: You're making the case quite evident that possible ajudication is the only relief left for this Debtor.

The issue before me is predicated on the Kevin Steel decision, and that is limited, limiting testimony to those issues. We are aware of the fact that Bohack has had problems and will have in the future.

Q Did there come a time recently that the Bozzudo company advised the Debtor that it could not continue to sell merchandise to the Debtor as much as the Debtor wanted?

MR. MANGAN: Objection.

MR. GOLDSTEIN: Your Honor, I think that is very germane to the subject right here.

MR. MANGAN: I am not objecting to the phrasing--to the question nor am I objecting to whether or not this type of factual pattern should be elicited, but it should come from the witness and not from counsel.

THE COURT: Sustained.

Q Mr. Binder, did you have any discussion with

Bozzudo or the principle of Bozzudo, namely, Adam Bozzudo, concerning the ability of Bozzudo to continue to deliver merchandise to Bohack on any of these bases?

A We have had discussions almost daily, daily with Bozzudo.

THE COURT: What did you say to him and what did he say to you, a standard phrase in the Courts.

A Mr. Bozzudo had the capability of delivering the groceries to the store but on a limited credit basis. That is, if Bohack attempts to expand on that credit basis for a period of time we did, but Mr. Bozzudo is persisting that we have to bring it back to its original credit term, which is basically anything that was bought on a Monday through Friday be paid for by the following week.

Q Mr. Binder, you discussed a two for one ratio and, supposedly, it was explained to counsel, with creditors selling to Bohack their merchandise on a two for one ratio. Are they extending credit to Bohack now?

A They are extending credit in the sense that their exposure is one dollar, one dollar for every dollar letter credit, above the letter of credit. But from industry credit terms, it is basically not credit as I know it in my twenty years in the business. They are only going along with the letter of credit that was given by the Manufacturers Hanover Trust Company. Which means normally we get a hundred thousand dollar letter of credit and they will supply us with two hundred thousand dollars worth of merchandise, which means that we have a credit over a hundred thousand dollars. Now, the normal credit would mean that we should be able to receive four or five hundred thousand dollars over our letter of credit, that would be the normal basis for business terms. So we are getting merchandise but we do not and we are not able to maintain the cash flow or the ability to sell all the merchandise before we have to pay our bills, which is not standard with other supermarket chains.

MR. GOLDSTEIN: I have no further questions.

MR. DUBERSTEIN: I have one question,

Your Honor, --- actually, I think about three questions.

THE COURT: Go ahead.

CROSS EXAMINATION

BY MR. DUBERSTEIN:

Q Mr. Binder, are you as Debtor in Possession operating profitably now?

A To the best of my knowledge.

Q You are aware of the fact that Judge Parente has directed the Director to propose and file with this Court a Plan of Arrangement no later than December 15th, 1975?

A I am aware of that.

Q In light of the ability of the Debtor in Possession to operate profitably, is it your opinion that it can go forward with a Plan of Arrangement by that time?

A It is our belief that we can put together a Plan of Arrangement by then, that we can operate properly, but only if we can continue operating under our present set up of buying from the wholesaler direct to the store.

Q Would you be able to structure a proposed Plan of Arrangement were you not in a position to save the more or less two million dollars that you testified to in answer to Mr. Shea's questions?

A Unequivocally not.

MR. MANGAN: Objection. That is not on the basis of the facts in the record.

THE COURT: It is an opinion by the witness, who is in the nature of an expert in this field, and I would accept it. The objection's overruled.

Q What is your answer to the question?

A My answer is if we can not have rid ourselves of the grocery warehouse and our own drivers of equipment, in no way could we put a Plan of Arrangement together.

MR. DUBERSTEIN: No further questions.

MR. SHAW: Your Honor, at this time in view of shortness of time because on Friday we did call and Judge Mishler did mandate that we have the trial at this point, we do not rest but I would just like to keep it open because there may be some other data and information that we can present to the Court.

THE COURT: Are you through with your direct examination of this witness?

MR. SHAW: No, I am not.

THE COURT: You are not finished with this witness?

MR. SHAW: No, I am not.

THE COURT: It is twelve o'clock, and we still have time, gentlemen.

MR. DUBERSTEIN: Are you asking for an adjournment at this time?

MR. SHAW: Your Honor, in view of the fact that we will have an adjournment, yes, I am asking that we terminate but I may have more questions of Mr. Binder or some other people --- but, however, Mr. Binder particularly. I am not through with ---

THE COURT: You are asking for a continuance to some other day?

MR. SHAW: Yes.

THE COURT: Mr. Mangan, would you have any objection or do you want to continue?

MR. MANGAN: No, I have no objection,

Your Honor, because it is my understanding that I am going to have two weeks in which to file an Answer.

THE COURT: We will deem that there is a general denial of the allegations of the complaint at this point, with your right to amend the general denial in writing and there will be no limitations. However, for this to have any significance we have to conceive of at least a general denial to the pleading by the Debtor in Possession.

MR. MANGAN: As I indicated to you earlier this morning, I take general exception to the proceedings as this matter is going before you.

THE COURT: If you are going to develop that as a technical objection subsequently then there would be no point in even commencing this proceeding today.

Now I am asking that you at least at this point in time put in an oral Answer deeming the allegations of the complaint as denied without restriction on your right to file a formal Answer with affirmative defenses, with counter-claims or anything else that you feel would be in protection of your client.

MR. MANGAN: As I have indicated, Your Honor, it is an exception to the procedure as I understand the direction of Judge Mishler, but I think that the direction of Judge Mishler was or should have been that there be a return date of November 17th on the Order to Show Cause and I submitted my papers in opposition to the application.

THE COURT: You leave me with only one recourse. I will deem the Order to Show Cause as the pleadings and your response thereto as the Answer to those pleadings.

MR. MANGAN: Your Honor, I have already been served with a summons and complaint.

THE COURT: I will deem that to be without any validity.

Now all I am asking is that we have a

proceeding properly instituted at this point. If we do not have that committment, I will then deem the Order to Show Cause as the pleading for the Plaintiff and your response thereto as the Answer.

MR. MANGAN: My response thereto, Your Honor, indicates there should be a summons and complaint served.

Also, that I should have an opportunity for discovery.

THE COURT: It is mere procedure, it is not a substantive right, but it is a procedural right. The new rules came subsequent to the substantive law.

As to procedure, certainly they are pertinent. However, the Court in its discretion may deem other terms, papers to constitute a pleading, and I am saying that is what I will do unless you put in an oral Answer now of a general denial which would not prejudice you or your client in any way. What I am attempting to do is to eliminate any technical objection to what is the proceeding in this Court today.

MR. MANGAN: Can we go off the record?

THE COURT: Yes.

(Thereupon, a conference was held off the record between the attorneys for the respective parties and the Court.)

THE COURT: Back on the record.

Do you wish to cross examine at this point on the basis of the testimony so far?

MR. MANGAN: No, sir.

MR. DUBERSTEIN: I think this examination is under rule of 205 of the Federal Rules, and it does not in any way deprive Mr. Mangan of the opportunity of conducting his cross examination because ---

THE COURT: I have preserved his right.

MR. MANGAN: We discussed this matter before coming in here on Friday. There was an agreement that as far as counsel for the Union there would be no need for cross examination at this point, but that an opportunity would be given for discovery and an opportunity would be given for putting in a formal Answer.

THE COURT: I reaffirm that statement and representation.

MR. SHAW: Can I find out when I will receive the Answer and how much time he wants for an Answer?

MR. MANGAN: I have already indicated two weeks from today.

MR. SHAW: When do you want to continue with this proceeding?

MR. MANGAN: At the time that the Answer is interposed, and I am not saying that I am going to put in an Answer only two weeks from today, as I will try to get you that Answer as quickly as possible and,also, I would ask and request to be able to examine those witnesses that are under the control of Bohack as well.

THE COURT: As to those witnesses that are under the control of Bohack, it is a direction of this Court that they make themselves available for examination without the necessity of subpoena.

MR. SHAW: I so told counsel on Friday I will do that.

MR. MANGAN: Yes, he did.

THE COURT: As to those parties who are not under the control of Bohack, I will suggest that counsel for the Defendant in this case seek their cooperation. If they do not cooperate, then the Court will grant you blanket authority to subpoena.

MR. MANGAN: Can those subpoenas be deemed so offered without coming out with them?

THE COURT: Deemed so ordered, and let the record indicate that.

I must stress the fact that time is of the essence here, without limiting your statutory right for full discovery. However, I would appreciate it if you would set aside some of your other business so we can bring this matter to a culmination.

MR. SHAW: I would like the record to note that we are here in November and we have a full calendar, but still I wish to call to your attention that as of the 16th of December I am going to go on leave myself and I would like to be here for this matter.

If it is at all possible I would like us to develop the continuation of this proceeding prior to the 16th or directly after the first of the year.

THE COURT: As an indication to Bohack, I have approximately nine hundred other cases or maybe more, and I wish counsel to be aware of this factor and others in considering that we will do the best we can from the Court's prospective and surely from counsel's position.

MR. MANGAN: Let me say that I can see it is in my client's best interest to have this matter resolved as quickly as possible.

However, what I would like to do is put in an Answer on or before two weeks from today.

THE COURT: Very good.

MR. MANGAN: At that time I would indicate those witnesses that I feel are necessary. I will try to provide Mr. Shaw or Mr. Shea, whoever they suggest, with the names of those individuals I am in need of.

THE COURT: I think you should incorporate the attorneys for the Creditors Committee who have contact in their sphere, and I am sure who will cooperate with you in bringing in those people who you may desire without the need of it being processed.

MR. MANGAN: Yes, I will give them the names of the individuals, those individuals whom I feel should be examined before this trial or as the trial commences. However, at a later time I think we are going to be in a better position to sit down and set a date for the continuance as opposed to trying to do it now.

THE COURT: We will fix specifically two weeks within which a responsive pleading by way of Answer, a formal Answer will be interposed by you in behalf of your client.

MR. MANGAN: Yes, sir.

THE COURT: With reference to a continuation of the action, we will leave that open subject to the time required by counsel to complete the discovery proceeding.

MR. SHAW: Surely. There will be no problem.

THE COURT: Let the record show that all Exhibits have been returned to the attorneys.

Gentlemen, we stand adjourned.

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(ADJOURNED HEARING PURSUANT TO ABOVE COLLOQUY.)

* * *

I hereby certify that the foregoing is a true and accurate transcript of the testimony taken at this hearing.

Clarence Edward Parker, Hearing Reporter

Transcript of Testimony of Joseph Binder at Hearing on Termination Proceedings on May 19, 1976 Continued from November 17, 1975

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
---x

In the Matter of THE BOHACK CORPORATION,

Debtor.

---x

THE BOHACK CORPORATION,

Plaintiff,

-against-

No.74-B-933

TRUCKDRIVERS UNION LOCAL 807, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, et al.,

Defendants.

---x

900 Ellison Avenue
Westbury, New York

May 19, 1976
12:15 p.m.

BEFORE: HON. C. ALBERT PARENTE,
Bankruptcy Judge

- - - - - - - - - - -

TERMINATION PROCEEDINGS

RE: LOCAL 807

- - - - -

APPEARANCES:

MESSRS. SHAW & LEVINE
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J. WARREN MANGAN, ESQ.
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PRESENT:

JOSEPH BINDER

FRANKLIN KNOBEL

* * *

THE COURT: Let the record show that this is a continuation of an action by Bohack to reject the contract with the Truckdrivers Union, Local 807, International Brotherhood of Teamsters, et al.

MR. SHAW: By agreement with Mr. Mangan, he has waived the appearances and the cross-examination of the following people. There are five in total, Arthur Leshin, Robert Gambeski, Nicholas Cassese, Ronald Leonard and Frank DeGregorio.

Your Honor, just to brief you because there has been a back-up on this trial, the Plaintiff-Debtor has rested the testimony on his case.

Now, am I correct, Mr. Mangan, that we have rested?

MR. MANGAN: There are a number of Exhibits that were introduced. I have requested that those Exhibits which were put on the record be here for me to examine.

MR. SHAW: They are on their way down.

MR. MANGAN: They are on their way down?

MR. SHAW: Yes.

MR. MANGAN: My recollection is that Mr. Knobel testified the last time and there is no cross-examination of Mr. Knobel.

MR. SHAW: The debtor rested.

MR. MANGAN: No, not resting, because there is still the cross-examination of Mr. Binder.

You had put in the direct testimony of Mr. Binder, so that is still part of your case.

MR. SHAW: My cross-examination of Mr. Binder?

MR. MANGAN: No, no, you had put in direct examination of Mr. Binder, and it is my opportunity to cross-examine Mr. Binder.

He is your witness so your case isn't complete.

THE COURT: And you may have some redirect.

MR. SHAW: I will go along with that.

Mr. Binder; would you take the stand,

please.

JOSEPH BINDER, a witness herein, having been first duly sworn by Judge Parente was examined and testified as follows:

CROSS-EXAMINATION

BY MR. MANGAN:

Q Mr. Binder, prior to the filing of the Chapter XI Petition, what office did you hold with the Bohack Corporation?

A President.

Q Following the Petition, what position have you held with the debtor-in-possession?

A President. Vice-Chairman of the Board, Executive Vice-President.

MR. MANGAN: Before we go any further, your Honor, it was, I believe, put into the record the last time and Mr. Shaw stated this to me yesterday, that the Depositions that were taken during December and February; December of last year and February of thisyear, that we have stipulated to the introduction of those depositions to be made a part of the record.

MR. SHAW: No objection to it at all.

They would normally be allowed to be used on cross-examination.

If they were here, he would ask them those questions, and if they were required to answer other than yes or no, and if there was a reservation, an objection to form on substance, I made an objection for the record; that is, if it were any matters not relevant to the question of onerous, burdensome with respect to the Plaintiff, but he has the right to use them otherwise.

THE COURT: Well, he is seeking to have it introduced in evidence in totality.

MR. SHAW: I have no objection.

THE COURT: You have no objection?

MR. SHAW: I have no objection.

THE COURT: Then, they will be deemed marked in evidence.

MR. MANGAN: Your Honor, would you prefer that we have these marked at this time, and then I will substitute copies for my office copies?

THE COURT: I would suggest that you do it in that fashion.

MR. MANGAN: Your Honor, shall we mark them as Defendant's Exhibit 1 for identification?

THE COURT: No. Mark them Aa, Ab, Ac etc., in evidence.

(Transcript of Frank DeGregorio dated 2/9/76 received and marked Defendant's A-a in evidence as of this date.)

(Transcript of Ronald Leonard dated 12/12/75 received and marked Defendant's A-b in evidence as of this date.)

(Transcript of Nicholas Cassese dated 12/12/75 - received and marked Defendant's A-c in evidence as of this date.)

(Transcript of Arthur Leshin dated 12/12/75- received and marked Defendant's A-d in evidence as of this date.)

(Transcript of Robert Gambreski dated 12/12/75 - received and marked Defendant's A-e in evidence as of this date.)

Q Now, Mr. Binder, during the time -- Mr. Binder, during the period between July the 1st, 1973 through March 31, of 1976, was there a collective bargaining agreement that covered the operations of the Bohack Corporation with respect to its own drivers operating out of the Maspeth Terminal?

A We had a contract with 807. I do not know the period that it covered.

Q You do recall the effective date of that contract, do you not?

A No. If I would see the contract, I would refresh my memory.

MR. SHAW: Your Honor, wealready had the contract introduced into evidence.

THE COURT: It will speak for itself then.

Q During the period of the effective date of that document and July of 1975, were the drivers paid pursuant to the terms and conditions of that contract?

A Yes.

Q Were all the health contributions and pension contributions which were required under that contract paid to the Local 807 Labor Management Health & Pension Fund?

A They were.

Q Did there come a time during the period between the date of the filing of the Chapter XI Petition and July 18 of 1975, when you entered into an agreement with the Shopwell, Inc.?

A Yes.

Q I show you this document previously identified as Defendant's Exhibit B for identification in the December 12, 1975 Deposition and ask you if you can identify it?

A This is the Shopwell Sales Agreement.

Q I notice that that document has a letter dated November 11, 1974. At the bottom of that opening page for the letter, it is reflected and shown as Page 38.

Do you have any explanation for that?

A I would assume that there are 37 prior pages and this is the sales agreement portion.

MR. SHAW: That document is on file in this Court.

The complete document is on file. The document is subject to the approval of the Creditor's Committee and approval of the Court.

A There were other letters that we gave them, Letters of Creditors, of Collateral. This is the sales portion of our agreement with Shopwell.

MR. SHAW: And that is filed with this

very Court.

Q As far as deliveries to stores and the purchase of goods from Shopwell, Inc., those areas would be referred to from Pages 38 through the last page, Page 60 of this document?

A It appears so.

MR. MANGAN: Mr. Shaw, does this document accurately reflect the document that is in evidence or a part of the record in the bankruptcy proceedings here in Nassau County?

MR. SHAW: I believe that, yes, this is the agreement with Shopwell, which has been approved by the Creditor's Committee and approved pursuant to Order of this Court. I do not know whether the sales agreement -- I believe it is a part of it, but I am not that positive.

MR. MANGAN: I offer this document previously marked as Defendant's Exhibit B for identification.

THE COURT: Any objection?

MR. SHAW: No objection.

MR. MANGAN: I offer it as Defendant's Exhibit B.

THE COURT: Mark it.

(Document - received and marked Defendant's Exhibit B in evidence as of this date.)

Q Mr. Binder, during November of 1974, did you have occasion to utilize the services of Shopwell, Inc. for the delivery of goods to the Bohack Stores?

A Yes.

Q The individuals that were employed to deliver those goods, were they employees of Bohack, the debtor-in-possession or Shopwell, Inc?

A No, Shopwell.

Q Were those employees paid pursuant to the collective bargaining agreement between Bohack and Local 807 or pursuant to some other labor agreement?

A They were employees of Shopwell. I would assume that Shopwell paid them according to Shopwell's Collective Bargaining Agreement with their own local.

Q But you know they were not paid in accordance with the Collctive bargaining agreement between Bohack and Local 807?

MR. SHAW: I object. That has nothing to

do with the termination proceedings, anything post of the termination date. I do not think this is relevant to the issues herein involved. We began this in July 1975, if I recall. I think anything which happened subsequent to July is not relevant to the issue, as to whether or not the contract should or should not be permitted.

MR. MANGAN: Did I use November of 1975?

MR. SHAW: I said anything post-July 1975, when this proceeding commenced.

MR. MANGAN: I am talking about prior to that date, when thisproceeding was commenced.

MR. SHAW: Then I object to the form of your question.

Why don't you rephrase it?

THE COURT: Reframe your question.

Q Mr. Binder, with respect to deliveries made to the Bohack Store, from Shopwell, Inc., made [illegible]om November of 1974, through the completion of your use of Shopwell, Inc., for those services, were the drivers paid in accordance with the terms and conditions as set forth in the Local 807

Bohack Contract?

A I stated they were employees of Shopwell.

Q And the answer to my question, yes or no?

A They were Shopwell employees.

Q Yes or no?

MR. SHAW: I think he has answered the question.

A I don't know how to answer the question.

How can they be paid in relationship to another union's contract?

Q So your answer to my question is no?

MR. SHAW: I object to the form of the question.

Judge, I think he already answered it.

THE COURT: Sustained. Sustained.

You are characterizing his answer, Mr. Mangan.

MR. MANGAN: I asked him a specific question, your Honor, that required a yes or no.

THE COURT: Obviously, he cannot give you a yes or no answer.

Q Mr. Binder, you stated that you know that there was a collective bargaining agreement between the

Bohack Corporation and Local 807.

That contract required certain obligations of you with respect to your employees and services that were performed.

Now, during the period that Shopwell, Inc. was performing services for the Bohack Corporation, were the people who were paid to perform those services and operating the trucks to perform those services from Shopwell, Inc. to the Bohack Stores, paid in accordance with the terms and conditions of the contract between the Bohack Corporation and Local 807?

MR. SHAW: Same objection. He is rewording his question but he is seeking the same results.

THE COURT: He is asking you to draw an inference, I believe.

If you can answer the question, all right; if you can't, state that you cannot answer the question.

A I can't because they were Shopwell employees. I do not know what Shopwell's labor contract is. They are not Bohack employees.

THE COURT: Your answer is no. All right.

Q Do you know if Shopwell employees were represented by Local 807; that is, the employees that were making deliveries to the Bohack Stores from Shopwell, Inc.?

A They were not.

Q As a result of your utilization of the Shopwell, Inc. services for deliveries to the Bohack Stores, was there a reduction in the number of employees of Bohack performing services to the Bohack Stores, their trucking services?

A We closed our warehouses in Bohack Square.

Q Could you just answer the question that I direct to you? Was there a reduction?

A Yes.

Q Are you familiar with the manner of payment made to Shopwell, Inc. for the performance of services by these truckdrivers from Shopwell to the Bohack Stores?

A Yes.

Q How was that paid?

A How were the drivers paid?

Q Yes.

A I assume they were paid by Shopwell.

Q How was Shopwell paid by Bohack for the performance of those services by Shopwell employees?

A As it states in the agreement, we used a set formula. It was broken up into two parts.

First, we had a price for the cost of merchandise, plus a percentage which included Shopwell's warehousing and administrative expenses.

Then therewas the second formula, where Bohack was to reimburse Shopwell for all trucking done by Shopwell to the Bohack Stores. Because Shopwell never had the experience of delivering to the Bohack Stores, and they were larger type stores than the Shopwell and they didn't want to figure a flat percentage like they did for the warehouse costs.

Q Was there a breakdown of costs per hour for services rendered by Shopwell, Inc., for the performance of these deliveries?

MR. SHAW: I object. I think that the document speaks for itself and it is in evidence.

Your Honor, I do not think this is proper cross-examination.

THE COURT: I will overrule. I will permit it.

A A bill was submitted, I believe, each week by Shopwell for all types of trucking expenses for the drivers from gasoline and tolls, etc. It was for all items necessary for deliveries to stores.

MR. MANGAN: I would like to have this marked for identification.

(Document - received and marked as Defendant's Exhibit C for identification as of this date.)

Q I show you Defendant's Exhibit C for identification and I ask you, sir, if you can identify that.

A It looks like a Shopwell Statement to Bohack.

Q The Shopwell statements, were they prepared on a daily basis or on a weekly basis?

A I think a weekly one.

Q In the upper right-hand corner of this document, the date of 11/22/74. When did you start using the Shopwell services?

A I do not know the exact date.

Q Would it be during November of 1974?

A Well, it hadto be. If this is an invoice, so it had to be at least that. We went into Shopwell, if I remember, in stages.

Q What were you using the Shopwell services for, insofar as merchandise?

A They were our wholesaler for Dairy, Bakery and produce Bozzuto is our wholesaler for grocery and Royal is for our dairy, at that time.

Q At the time that you were using Shopwell for the produce, who were you using for groceries?

A Bozzuto. Krasdale at one point.

We also had the Bohack grocery warehouse open.

Subsequently, we had Buzzuto and the Bohack warehouse was being utilized at the same time.

After we closed the Bohack warehouse, we continued to use Buzzuto.

Then we went to Filigree, the Filigree Stores in New Jersey.

Subsequently, we went -- we substituted Krasdale Foods when Filigree went in Chapter XI.

Q But there was a time that you were using the Filigree operation for groceries, and you were using the Maspeth operation or facility of Bohack for groceries, and also using Shopwell for produce.

A Yes.

Q When you were using the Filigree Warehouse for groceries, were you using drivers employed pursuant to Local 807 Bohack Contract?

A We were.

Q Were you utilizing Filigree with the loads coming from the Filigree Warehouse and going to your Maspeth facility for ultimate delivery to the stores?

A They were.

Q Were the loads coming from Filigree taken from the trailers and brought into the Maspeth warehouse or did they remain in the trailers for delivery to the stores without ever being merged into the Maspeth warehouse?

A Later they were used as holding areas, but they were never brought in our warehouse.

Q So the Maspeth warehouse was for groceries during this time that you were using Filigree as a staging area?

A Yes.

Q The grocery loads that were picked up from Filigree were picked up by 807 drivers; is that correct?

A That is correct.

Q The transfer of those groceries from Fsligree to the Maspeth Terminal was done by 807 drivers?

A That is correct.

Q The trailers were then dropped at the Maspeth Terminal?

A That is correct.

Q The delivery from the Maspeth Terminal was [made] [~~paid~~] by Local 807 drivers?

A That is correct.

Q And those drivers went from Maspeth to the stores?

A Thatis correct.

THE COURT: Can we fix a period of time so that the record will be clear as to when this was done?

Clarify the time frame.

Q When did you start utilizing Filigree for the purchase of groceries?

A I don't recall thedate, but I would have to assume at a point after we closed the Bohack Grocery Warehouse. I don't know the exact date.

THE COURT: Is there any documentation by which we can refresh our recollection?

Is that information available to you, Mr. Mangan?

MR. MANGAN: Not to me.

THE COURT: Do you have any objection to counsel stating it for the record?

MR. MANGAN: No, your Honor.

MR. SHAW: The grocery warehouse was closed on January 16.

MR. MANGAN: Of 1975?

MR. SHAW: 1975, right.

That is in some prior testimony in this court.

MR. MANGAN: Were the Filigree services utilized prior to the closing of the Maspeth grocery warehouse?

MR. SHAW: No, I do not believe they were. Filigree went into bankruptcy, as you know.

THE COURT: What period of time did it cover? We have the inception date, when did it terminate?

THE WITNESS: On the date that Filigree filed its Chapter XI.

THE COURT: Give it to us in months.

MR. SHAW: I remember the time frame. It was the summertime, it was probably in July or August.

MR. BINDER: It was the Summer of 1975.

THE COURT: Let's clarify the time aspect as counsel asks questions of the witness.

MR. SHAW: It was February to mid-Summer.

THE COURT: All right, then we know when we are talking about.

Q During the period between mid-January and mid-Summer of 1975, the services of Filigree were used as you described them in answer to my previous question?

A That is correct.

Q There were no other means or manner of using the Filigree services other than what you have already described?

A That is correct.

Q During November of 1974, you began using the services of Shopwell?

A Right.

Q The Shopwell services were performed in a manner just similar to that which you described for Filigree?

A That is correct

Q When you purchased groceries from Filigree, were you purchasing F.O.B., the Filigree warehouse?

A Yes.

Q I show you Page Number 2 of Defendant's Exhibit C for identification. I ask you if you can for the purposes of the record, clarify the billing procedure that is shown on that page?

MR. SHAW: Your Honor, I will object to this line of questioning unless there is an offer of proof first. I think we will be going on to 5:30 if not 7 o'clock unless there is an offer of proof.

THE COURT: No, we're not. We are goingto adjourn at 1 o'clock. We can continue after 2 o'clock, but we have another matter, if you recall.

MR. SHAW: If I can have an offer of proof, maybe we can dispense this complete testimony.

Unless there is an offer of proof, I do not know where he is going.

THE COURT: Are you prepared to make an offer of proof?

MR. MANGAN: Yes.

As I understand the case as we have referred to during the previous time --

MR. SHAW: No, not now.

MR. MANGAN: Won't you give me any consideration?

MR. SHAW: I want him to listen to your statement. He was reading a piece of paper.

Listen, Mr. Binder.

MR. MANGAN: My understanding of the case is that the Plaintiff has two burdens.

The first burden is to overcome what I have contended earlier, that once the contract has been impliedly or explicitly accepted by the debtor-in-possession, that the National Labor Relations Act takes over with respect to its termination date.

That once that implied or explicit acceptance takes place, the contract is binding upon the debtor-in-possession, just as it was binding upon its predecessor or the debtor corporation.

The second burden of the Plaintiff in this case is to establish -- assuming that it is able to establish the satisfaction of the first burden, that in fact, the contract is onerous and burdensome.

I believe that I will be able to show during cross-examination of Mr. Binder that the contract between Local 807 and the debtor-in-possession, that the contract was not onerous and burdensome.

THE COURT: I know what you are driving at, but where is the offer of proof?

You are giving me a statement of law.

MR. MANGAN: My offer, to show to this witness if he is allowed to testify that the contract between Local 807 was not onerous, not burdensome and that the information contained within the Exhibit has to be explained by Mr. Binder and will establish that there's no onerous, burdensome aspect to Local 807's contract.

MR. SHAW: That is a conclusion. Where is the offer of proof? Specifically, what is the offer of proof?

THE COURT: We have no offer of proof.

Gentlemen, I think we will adjourn to two o'clock. I will afford you the opportunity to put down a proper offer of proof if you desire.

If not, just proceed with the cross-examination.

Frankly, I think an offer of proof in the course of cross-examination is improper anyway.

MR. SHAW: I object to it, unless there is an offer of proof.

THE COURT: The Court stands adjourned until two o'clock.

(Whereupon, at one o'clock p.m. a luncheon recess was declared.)

* * * *

P. M. SESSION

(Whereupon, at 2 o'clock p.m.the within proceedings continued.)

THE COURT: All right, let's put this on the record.

MR. SHAW: Judge, the problem is Mr. Rifkin arrived supposedly with all of the exhibits, but as it has turned out, he left -- he took the wrong file, he did not bring the file in this case,and therefore, we do not have the Exhibits. He just left and he will be back in an hour.

I suggested to Mr. Mangan to go forward as it is possible that he can, or to wait until Mr. Rifkin comes back.

MR. MANGAN: The problem is, your Honor, I was told yesterday that Mr. Binder is going to be going to a doctor at ten minutes to three, and Mr. Rifkin is not going to be back for an hour.

It seems to me that we have got a problem.

THE COURT: Can you proceed at this juncture, without those Exhibits?

MR. MANGAN: There is no question that I can proceed without the Exhibits, but we are only going to have to come back again.

THE COURT: Let's get done as much as we can.

Continue your cross-examination.

If the Exhibits do come in timely, then I will leave it to you whether you want to put it off to another day or continue with the matter.

MR. MANGAN: All right.

THE COURT: We should be pretty close to a conclusion, I would think, to this trial, and I will afford you an opportunity to brief the issue and to submit it for a decision.

CROSS-EXAMINATION

BY MR. MANGAN (Cont'q):

Q Mr. Binder, I believe, when I had addressed my last question to you, that we were dealing with Page 2 of Defendant's Exhibit C for identification.

I asked you to explain to me just exactly what you have on Page 2 with respect to your transportation costs, and how were they broken down by Shopwell?

A It is the Shopwell computation on how it bills Bohack for the driver costs and the costs of the trailer and tractors.

MR. SHAW: Your Honor, note my continuing objection to this line of questioning.

A And the excess mileage tax.

Q With respect to your arrangement with Shopwell, Inc., were you going to reimburse Shopwell for any costs that it incurred with respect to the labor and equipment for making deliveries to Bohack?

A The arrangement was to purchase merchandise from Shopwell. It was a cost-plus operation for warehouse and reimbursement to Shopwell for all trucking, that is all trucking expense to the Bohack Stores. Shopwell would give us a documentation on a weekly or a monthly basis and we would reimburse them, not really reimburse them for trucking costs, but to pay them for whatever costs it took to deliver merchandise to the Bohack Stores.

Q On Page 2 of Exhibit C, we have a breakdown on truck costs. It shows one driver at three hours at $5.85. $5.85,87 cents.

A $5.85,87cents.

Q Is that per hour?

A It would seem so.

Q So that the transportation costs that Shopwell had with respect to its drivers for the deliveries of Bohack merchandise was at five dollars and eighty-five, eighty-seven -- $5.85, 87 cents per hour?

A That is what is down there.

Q In addition to that, you had a fringe benefit cost; is that correct?

A It states fringe cost at 20.5.

Q You also had the tractor-trailer expense?

A That is correct.

Q Whose tractors and trailers were utilized by Shopwell, Inc.?

A Shopwell.

Q Were those tractors and trailers leased to Shopwell?

A They were.

Q By whom were they leased?

A By Truck Fleet of New York.

Q Is that a wholly-owned subsidiary of Bohack?

A It is.

Q Are those the same tractors and trailers that were utilized by the Bohack employees for making deliveries to Bohack stores?

A Partially.

Q What other equipment was utilized that was not used by the Bohack employees?

A These equipment that were leased to Shopwell were leased to Shopwell because they refused to buy --

Q I didn't ask you that. I said what other equipment was --

MR. SHAW: Objection.

Q I asked you whether or not that was the same equipment which was used by Bohack employees and you said partially?

A Correct.

Q And was there any equipment utilized by Shopwell for deliveries to Bohack stores that were not provided by Truck Fleet of New York, Inc.?

MR. SHAW: Counsel may not like an answer but he should let the witness have an opportunity to finish his answer.

I move to so advise, but in the meantime, I think that he should allow him to answer the question fully.

THE COURT: Can you answer the question, Mr. Binder?

THE WITNESS: May I answer it my way?

THE COURT: Answer it your way.

A The cost of shopping with Shopwell and reimbursing Shopwell for trucking expenses is not in contention here.

The only way that Shopwell would sell to Bohack was if it would deliver to Bohack Stores with its own drivers.

Shopwell refused to buy equipment as a capital outlay and insisted that Bohack lease to them some equipment.

So that if Bohack should have been adjudicated,that they would not be caught with a large number of trucks which they couldn't use.

This was the only way that they would do business with Bohack.

The cost, whether it is 807 drivers or Shopwell's 277, as far as the cost -- I mean, if theoretically Shopwell driver costs were twice as much as Bohack's 807 cost, we probably would still have to deal with the Shopwell team because it was the only game in town and that was the only way they wanted to sell to us and they would not take it any other way. That is the whole point.

THE COURT: So you concede that the cost was comparable to the cost of your own operation?

THE WITNESS: Yes, sir.

Q And that applies to wages, fringe benefits and all other terms and conditions of employment?

A I would assume that most Teamster contracts in the New York area are comparable.

Q I am not asking you for your assumptions. I am asking whether you are contending that the differences in the contract, between the Contract that applied to the Shopwell employees and the contract that applied to Local 807 employees was disproportionate or equal in amount?

A I would say they are comparable. I can't do it to the exact penny, but I would say that they are comparable.

MR. MANGAN: Your Honor, can we go off the record a moment?

MR. SHAW: No, I don't think that we should.

THE COURT: Why do you want to go off the record?

MR. MANGAN: I have examined the records, the court records, to find out whether or not the Local 807 contract was listed by the debtor-in-possession as an executory contract and my review of the records indicated to me that it was not listed as an executory contract.

I have asked for a stipulation from counsel that that is a correct statement.

MR. SHAW: No, that is a totally incorrect statement, because that is half of the statement. Neither was there any listing for an executory contract, or were there any contracts affirmed.

That was not accomplished yet, because we don't know which contracts we are affirming or which we are rejecting, except by order of this court. We are moving that way.

Now as to this contract, Bohack has not affirmed this contract, but it specifically moved to reject it.

MR. MANGAN: I am talking about the schedule of executory contracts that were filed with this Court after the petition was filed, in accordance with the Bankruptcy Rules and Act, and that the 807 contract was not listed as an executory contract.

THE COURT: The record will indicate whether it was or it wasn't, insofar as the listing.

MR. MANGAN: I am asking for a stipulation: When he filed the executory contracts, he did not list 807 as an executorycontract.

MR. SHAW: I didn't. I do not have a recollection, your Honor, but I will check it and find out.

You're talking about the statement of affairs.

THE COURT: Assume that it is so, he checked the records.

MR. SHAW: If he checked it, he found in the statement of affairs it was not listed as a executory contract.

Is that what you are referring to?

MR. MANGAN: I am referring to your statement of executory contracts.

MR. SHAW: In the statement of affairs filed in this court?

MR. MANGAN: In your listing. I am not going to limit myself to the statement of affairs.

THE COURT: Assuming that is the case --

MR. SHAW: That I will concede.

THE COURT: Mr. Mangan, the record will be controlling, and he concedes that.

Q The loads that were coming from Shopwell, Inc., wer those pre-selected loads?

A What does that mean?

Q Were those loads phoned in from the Bohack Stores, so that the loads that were coming out of Shopwell were loads that did not have to be broken down in any way before they were delivered, that they could go directly to the stores and be delivered just as if they came out of Bohack's warehouse?

A Shopwell was our wholesaler. Their orders --

Q Can you answer my question?

MR. SHAW: If you can.

Don't badger the witness, I respectfully request.

If you can, answer it.

A The Bohack Stores ordered from Shopwell on a store-by-store basis; and Shopwell delivered to Bohack Stores on a store-by-store basis.

Q When the grocery loads came from Filigree were those pre-selected, as well?

A I believe so.

Q So they were also store-by-store, and they went directly to the store?

A I think so.

Q Prior to the petition being filed, did Bohack utilize Buzzuto's Warehouse for the supply of groceries?

A Yes.

Q During the period before the petition was filed, were the local 807 drivers utilized to pick up those Buzzuto loads?

A They were.

Q Were those Buzzuto loads pre-selected on a store-by-store basis?

A Yes and no. Some were in bulk and some were pre-selected.

Q During that period of time were they in bulk?

A I would think the period in the months preceding the filing of the Chapter XI petition that most of them were in bulk. When Bohack had meagre stock in its own warehouse because of lack of credit on the part of the national manufacturers.

Q The 807 drivers would go up to Buzzuto prior to the petition being filed, pick up thebulk loads and bring those bulk loads back down to Bohack Square; is that correct?

A That is correct.

Q Would those loads be merged in the warehouse with other merchandise of Bohack?

A They were bulk loads. They had to be merged.

Q After the petition was filed, the procedure with respectto Buzzuto was changed; is that right?

A Partially.

Q Did there come a time when it was totally changed so that there was no merger in the Bohack warehouse?

A There was a point that after we closed the Bohack grocery warehouse, there was a period of time when the 807 drivers went to Buzzuto and brought full trailerloads pre-selected to Bohack Square as a staging area, with the same methods that they were using with Filigree.

Q Was that the procedure you have just outlined, was that utilized on a partial basis during the period between the filing of the petition and the closing of the Bohack Square grocery warehouse?

A Possibly.

Q But after the close of the Bohack Square grocery warehouse, all of the loads that came from Buzzuto were pre-selected, with the loads going on a store-by-store basis, but first brought down to the Bohack Square terminal and that terminal was used as the staging area for deliveries ultimately by 807 drivers to the Bohack Stores?

A I said that.

Q Do you agree with that statement?

A Yes.

Q Is Bohack still utilizing Shopwell, Inc. for produce, dairy and bakery?

A Not this week, but next week they will be, not this week.

Q During the period between the filing of the petition and this week, has there been a period when you didn't utilize Shopwell?

A Yes. We switched from Shopwell on our perishables to Royal , Farms, for our dairy. Then we went to Hills' Supermarket for our meat produce and deli items.

Q When did that take place?

A After we terminated with Shopwell, which was around -- this is a guesstimate -- August 1975.

Q Did you solicit the Hills' Warehouse for its use to provide you with those items that you have just referred to?

A No, Hills solicited us.

Q When did they do that?

A Sometime prior to August 1975. Iwould assume a month or two before.

Q Did Hills' limit itself to the produce, meat and deli, or did they solicit all of your business?

A Hills would have liked to have handled all of our business.

Q Is that what they sought?

A That's correct.

Q Is it your contention that the labor agreement that covers the Hills' drivers, is comparable to the 807-Bohack Agreement?

A I would think so.

Q That any cost differentials that might exist between those agreements was not afactor in making your decision?

MR. SHAW: Your Honor, note my continuing objection to this line of questioning. It is completely irrelevant.

THE COURT: I will note it.

A The transportation portion on Shopwell and Hills was not a factor in our deciding who our wholesalers were.

Q During the period that you were negotiating with Hills, did you ever indicate to Hills that you had a labor agreement with Local 807, covering transportation?

MR. SHAW: Objection, your Honor.

THE COURT: Overruled.

A I do not know if we indicated it, but Hills was cognizant of these facts.

Q Did you ever discuss with Local 807 representatives that you were discussing with Hills the idea of Hills taking over the transportation to the Bohack Stores?

A Did I ever discuss with 807 representatives about Hills taking over the transportation of the stores?

Q Yes.

A Well, obviously, if I was negotiating with Hills' to be a supplier, they had to take over the transportation to the stores.

Q Did you ever discuss with any of the Local 807 [illegible] Hills, regarding transportation to the Bohack Stores?

MR. SHAW: Your Honor --

THE COURT: Answer it either yes or no.

A Yes.

Q When did you discuss it and with whom?

A I discussed it when I discussed the whole purchasing of products from Hills. I discussed it, I guess with John Holman.

Q Did you ever discuss it with a Local 807 representative?

A I spoke probably to John Holman of 807.

Q Were there any negotiations between yourself and Holman with regard to Hills' taking over what had formerly been done by Shopwell?

A What was the question?

MR. MANGAN: Your Honor, can we have the question read?

THE COURT: Yes

(Whereupon, the pending question was read by the reporter.)

A No.

There was no discussion with John Holman. I told him I was switching from Shopwell to Hills , which was a complete switch of warehousing, buying and trucking, et cetera.

Q Was there any savings to Bohack as a result of the transfer from Shopwell to Hills ?

A On an overall situation, at the outset, there was a savings.

Q Those savings, did it have anything to do with transportation costs?

A None whatsoever.

Q When Hills came to you, they were in need of your business in order to satisfy their costs for their overhead and their warehouse, and to satisfy the problems they were having regarding the possibility of a Chapter XI proceeding of their own.

MR. SHAW: He is leading the witness.

A Yes. Hills needed volume in their warehouse.

Q They needed the volume. They said this: Mr. Binder, we will take all of your business, because we have that much room in our warehouse and if we don't have your business, we're in trouble? I don't know about that last part of your statement.

THE COURT: Assuming that is so, Mr. Mangan, I am now going to consider the objection of counsel. Let's get to the point in issue here.

MR. SHAW: Because I think that what Mr. Mangan is doing --

THE COURT: I know what he is attempting to do. Let's get on with it.

MR. SHAW: It is not relevant in this

case.

If he has another case in another administrative body, I think it belongs there, to go there and ask these questions.

THE COURT: I don't see the relevancy of Hills needing their business.

MR. SHAW: Thank you.

THE COURT: Or not needing it, for that matter.

MR. MANGAN: Mr. Binder is contending and Bohack is contending that the contract is onerous and burdensome.

THE COURT: I know. I have read the pleadings.

MR. MANGAN: Based upon the testimony of Mr. Binder, there is a question of how onerous and burdensome this contract is. It doesn't appear to be onerous and burdensome at all.

THE COURT: Appearances are not evidence. You know that. Let's get to figures.

There was testimony as to figures and cost, but you have not touched on that.

MR. MANGAN: Because I do not have the

documents. Mr. Shaw does not have the documents here.

MR. SHAW: They are on their way.

I apologize to the Court because the wrong file was brought in.

THE COURT: Well, then, we're just biding time because this is not proper cross-examination.

MR. MANGAN: I respectfully differ.

THE COURT: Frankly, you are going outside of the testimony that was testified to earlier in this proceeding.

MR. MANGAN: I think it is an issue here, whether or not the contract is onerous and burdensome.

THE COURT: I certainly know what is at issue here.

MR. MANGAN: In order to establish that it is onerous and burdensome, it is up to Bohack to set it forth.

THE COURT: They have presented their case.

MR. MANGAN: And we are going behind those figures.

THE COURT: Not at this juncture, you're not going behind them at all. There is some merit, since you do not have the exhibits before you, but certainly you can ask certain other questions as to cost, with or without those exhibits.

MR. MANGAN: Mr. Binder testified that the cost is between 807's contract and the cost covering the contract between Shopwell and the Hills' operation, which were comparable.

THE COURT: There is no question about that aspect of it, of cost.

MR. MANGAN: There is also a position that has been taken, that it was because of warehousing that created the problem.

THE COURT: Exactly.

MR. MANGAN: I think the evidence that is in will show you clearly that the Shopwell Contract provides for the purchase at Shopwell's facility, F.O.B. Shopwell Facility. The Filigree Operation was F.O.B.

Filigree.

The Hills' Operation given these circumstances could have easily been F.O.B. Hills if the debtor-in-possession desired to comply with the terms and conditions of its 807 Contract.

THE COURT: Assuming arguendo, you're absolutely correct. These are all generalities.

Let's get to the specifics of costs. They have testified that it was onerous and burdensome. They gave figures. They presented figures, and this is what you should be directing your cross-examination to.

MR. MANGAN: All they have presented, your Honor, was a sheet of paper which was submitted by Mr. Binder.

THE COURT: And there was testimony.

MR. MANGAN: That it was onerous and burdensome applying the 807 Contract.

What I am trying to find out now, your Honor, where was it -- if it wasn't the terms and conditions of the contract, where was that onerous and burdensome aspect of the 807 Contract --

THE COURT: All right.

MR. MANGAN: -- when the negotiations with Hills commenced?

MR. SHAW: Your Honor, you sustained my objection. I thought with respect to Hills .

THE COURT: I do not think it is germane to the issue, as to their dealings with Hills , or why Hills' was dealing with them.

As to the reasons behind it, I think is unimportant to the subject matter we are concerned with. It doesn't matter whether they made an agreement or entered into an agreement with Hills .

What you should be driving at, was that more costly or on a par with their own costs when they operated their own terminal and did their own trucking. That is what is in issue before me as I understand it.

MR. MANGAN: No. Because what your Honor is doing is accepting the warehouse was necessary in order to comply with the 807 Contract, and that is totally disregarding --

THE COURT: I am not assuming anything. I am merely attempting to direct you to what I think is the pivotal question before the Court.

MR. MANGAN: The pivotal questions, I think, your Honor, are what are the costs from transportation, from whether it would be Hills, from whether it would be Shopwell --

THE COURT: It is an over-view situation. It is not limited to one facet at all. I have to look at this from a total economic picture of this debtor-in-possession.

MR. MANGAN: Can I continue with respect to Hills, your Honor?

MR. SHAW: I have objected, your Honor.

THE COURT: As to what? That Hills was in need of business for its warehouse? Why is that germane to this issue? How is it germane to the issue?

MR. MANGAN: I would like to find out whether or not there was ever any negotiations with Hills regarding the application of the Local 807 Contract.

THE COURT: Ask him that.

BY MR. MANGAN:

Q Were there any negotiations between Bohack and Hills regarding the application of the Local 807 Contract?

A We asked Hills if we could purchase products from them F.O.B. their warehouse, and they said the only way that they could sell to us if they could deliver to stores with their drivers. Then they would go along with it and they wouldn't make any profit on the transportation of it, but that they would not allow any other union to come in because they had their own union problems.

That was the same situation that we had with Shopwell, when we had asked Shopwell to take in the 807 drivers, and they, too, refused to do so, and would not sell if they had to.

They didn't want to get involved with

another union, they had their own union.

Our concern, basically, was to supply products to the Bohack Stores.

MR. MANGAN: I would like this marked for identification, please.

(Document - marked Defendant's Exhibit D for identification, asof this date.)

THE COURT: Do the terms of your plan refer to this executory contract at all?

MR. SHAW: This one? No, your Honor, the plan was submitted to the Creditors Committee and approved during the time that we had previously moved to disavow this contract

The Creditors Committee advisors had consented.

THE COURT: All right.

BY MR. MANGAN:

Q Mr. Binder, I show you Defendant's --

MR. SHAW: Just to interrupt a minute, that was still pending in this Court.

We called this a bifurcate trial.

THE COURT: I would not prevent you from disposing of it through the Plan and eliminate all of this.

MR. SHAW: We did not do that because this was a case pending in this court, so for that reason, we didn't.

Q Mr. Binder, I show you Defendant's Exhibit D for identification. I ask you if you can identify it?

A This is the Hills sales agreement; the agreement between Hills and Bohack.

MR. MANGAN: I move to introduce Exhibit D for identification into evidence.

MR. SHAW: No objection.

THE COURT: That is a part of the records, isn't it?

MR. MANGAN: Yes.

THE COURT: I think marking these records are superfluous. Many of them are in the record.

If you want to use it for examination purpose all right. I do not believe that it is necessary to introduce it as an Exhibit in evidence, since it is a part of the record. It is a photostatic copy, anyway.

All right, mark it.

(Hills - Bohack Agreement - photostatic copy - received and marked as Defendant's Exhibit D in evidence, as of this date.)

MR. MANGAN: I would like to have this marked.

(Document - marked Defendant's Exhibit E for identification, as of this date.)

THE COURT: Isn't that a part of the record?

MR. MANGAN: Yes.

THE COURT: I have said I think that marking these records is superfluous for they are already in the record.

You can use them for examination purposes. I do not believe it is necessary to introduce it as an exhibit in evidence. It is a part of the record; it is a photostatic copy anyway.

Q Mr. Binder, I show you --

THE COURT: If they are a part of the Court's records, I do not think that there any necessity for marking these documents.

Q I show you these eight pages of this document and ask you if you can identify it?

MR. SHAW: Objection, your Honor.

I think your Honor has indicated that it is deemed marked as a piece of evidence.

MR. MANGAN: You do not know what I am presenting.

MR. SHAW: Your Honor, I think we are going into a point of --

THE COURT: We're going to get nowhere if you jump up on each occasion. He has it before him.

Do you know what that is?

THE WITNESS: It is a statement from Hills to Bohack.

THE COURT: Is it a part of the overall agreement?

THE WITNESS: No. It is probably a weekly invoice. It seems to be a statement, not the specific invoices, of the purchasing of products, produce, meats, advertising, health and beauty aids, with the up charge in it for the warehousing and buying and for the figuring of the costs for the trucking.

THE COURT: All right, that is sufficient identification for what it is.

THE WITNESS: It is how to figure the cost of our merchandise, F.O.B. delivered to our stores.

Q On Page 3 of Defendant's --

THE COURT: Has that been marked in evidence?

MR. MANGAN: It is marked for identification.

THE COURT: We do not know if that is a valid record or not. It is just a photostatic copy.

MR. MANGAN: Your Honor, it was submitted to me by Bohack during the course of the Deposition that was taken of Bohack by Mr. Binder on December 12, 1975.

MR. SHAW: May I see it?

(Handing)

MR. SHAW: This was originally offered as the agreement of Hills'. This is not the agreementof Hills'.

MR. MANGAN: If you look again, Mr. Shaw, it was marked as Defendant's Exhibit. This was D and this is E.

MR. SHAW: May I have a voir dire?

THE COURT: Has that been marked in evidence?

MR. MANGAN: The contract has been marked in evidence.

MR. SHAW: May I have a voir dire, your Honor?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. SHAW:

Q Mr. Binder, are you familiar with these statements, or are you not?

A I am not familiar with them, but I recognize them.

Q And are those statements that were rendered by Hills to us?

A Yes.

MR. SHAW: I have no objection.

THE COURT: Do you want to mark it in evidence?

MR. MANGAN: No, I want to ask questions.

MR. SHAW: I am going to object to questions if it is not marked in evidence. A proper foundation --

MR. MANGAN: Mark it, please.

(Document - received and marked as Defendant's Exhibit E in evidence, as of this date.)

Q I show you Page 3 of Defendant's Exhibit E in evidence, where it has a line two, fourteen dollars and twenty-nine cents.

Is that the cost per hour for transportation charges from Hills to the Bohack Stores?

A It is an all-inclusive number, including drivers, administration, some shifting of trailers in the yard and all the other expenses going in.

What Hills did is to work up the cost figures in the various areas, and come to a composite number.

This supposedly was the cost to Hills to deliver to the Bohack Stores, of which subsequently, we found out that this figure also happened to have been inflated, and Bohack happens to be contesting that number at the present moment. But it is an overall composite rate for trucking from Hills' Warehouse including work done at the Hills' warehouse, in their yard, to Bohack's Stores.

Q In that figure of $14. it does not include the tractor and trailer charge?

A I don't know.

Let me see. No, the tractor andtrailer rental is a separate figure.

Q So we are dealing with the cost for the manpower and that was $14.29 that was being charged to the Bohack Corporation or the debtor-in-possession by Hills for transportation from Hills to the Bohack Stores.

A There is more than manpower in that composite number. There is a breakdown in that $14. which includes a certain amount of administration, some office overhead, as far as the office overhead pertains to the Bohack portion of the business to Hills . It is probably mileage, tax, and maybe some other items are in there in addition to driver's wages.

Q Don't we have tolls as a separate item and we have fuel and oil as a separate item, and don't we have mileage tax as a separate item?

A Right, but in the 14.29 there are other things besides -- quote -- manpower.

Q You found out that that is an inflated figure, $14.29?

A That is correct.

Q You were being overcharged?

A That is correct.

Q When did you find out that?

A About a month-and-a-half ago.

Q You said there was a reduction in cost, when Bohack transferred from Shopwell to Hills ?

A Right.

Q Where did that reduction in cost come in? It certainly wasn't in the transportation cost, was it?

MR. SHAW: That is argumentative. I will ask him to rephrase the question.

THE COURT: Objection is sustained, as to form.

Q Where was the reduction in cost, when Bohack transferred from Shopwell to Hills ?

A In the formula with Shopwell, it started out with a net cost to Shopwell of the product to manufacturer plus an upcharge for the warehousing.

For example, on meats, Shopwell, I believe, was cost plus one-and-a-half cents per pound on meats.

Hills' proposal was cost plus one-and-one-eight cents per pound on meats.

In that respect, that was partially part of the savings we're talking about.

When you go to the delicatessen area and health and beauty areas, you will find other comparables, what we call less of an upcharge.

Q Before you sought Shopwell as a supplier, did you seek Hills as a supplier?

A Hills --

MR. SHAW: Objection. I object to the form of the question. It assumes --

THE COURT: Sustained. Incompetent, irrelevant and immaterial.

What's the difference? Let's stay with the cost.

MR. MANGAN: I think it is material if Mr. Binder sought Hills as a supplier at or before the time that it entered into its agreement with Shopwell and was unable to get Shopwell -- Hills rather, to supply it or the cost, or supply Bohack, or the cost was going to be greater than the Shopwell cost.

Then, at some few months later, is able to enter into an agreement with Hills , where the Hills' cost is going to be significantly cheaper than Shopwell. I think it goes to show the negotiating position Bohack was in, and that at the same time it was negotiating the preferential rating for its produce and meat, that it was also in a position to negotiate that the produce and meat would be F.O.B. Hills' facility, as it had when it entered into its contract with Shopwell and as it did when it entered into its agreement with Filigree, and as it did when it entered its agreement with Bozzuto.

THE COURT: Assuming all that you are, assuming all that, and it is conceded, where is the relevancy?

MR. MANGAN: We are only talking about

the application of the 807 Contract.

What I am trying to establish here and I think that those questions are relevant, is that the 807 Contract was not a problem, it was not costly and --

THE COURT: You are making a statement.

All I said to you is where is the relevancy.

MR. MANGAN: I think the negotiating position of Hills, of Hill's vis-a-vis Bohack is important.

THE COURT: I don't care about that, and I don't think you should either. What we have to do is get down to costs.

MR. MANGAN: That's what we are talking about.

THE COURT: Show this Court through proper evidence, that a continuation of the 807 contract was not burdensome and onerous.

They have testified in their direct testimony that it was, and they gave figures, not any negotiations that they had with Hills.

MR. MANGAN: They didn't show any books or records.

Your Honor, they came in here with a paper which was prepared by Mr. Binder, and Mr. Binder contended that there was a significant cost.

Now, I don't even have the document.

MR. SHAW: Your Honor, I am going to make this statement.

THE COURT: I am going to suspend this until you get the proper document.

I will suspend this trial. There is no point in going all around tangential issues and not getting to the heart of the matter.

This matter has been dragging on for how many months now?

MR. SHAW: Your Honor, this has gone on since July, if I recall, 1975 -- if I am correct, but Judge Mishler on November 26, 1975, and I have the record before me --

THE COURT: Why don't you utilize 353 and put it in your Plan?

MR. SHAW: I can amend the Plan.

Your Honor, when we submitted the Plan,

the matter was before the Court and therefore, I felt that it should be studied by the Court and I did not put it in. I can amend the Plan and put it in, and knock it out.

MR. MANGAN: The contract has expired, your Honor.

THE COURT: Then, what are you doing here?

MR. MANGAN: I am not seeking anything.

THE COURT: What can the Court do for you in terms of relief?

MR. MANGAN: I am saying that this contract is not subject to this Court's revocation.

MR. SHAW: That has been decided already.

MR. MANGAN: Already? No. We have an expiration of a contract

MR. SHAW: On the contrary. Judge Mishler decided it already and referred it to the Court on the grounds of the Kevin Steel Decision.

THE COURT: There was a Stipulation that

held this matter in abeyance, until the decision of the Kevin Steel. You construe Kevin Steel in one fashion, and the Court looks at the decision in a different aspect entirely from yours.

MR. MANGAN: I also have to say that I didn't tell counsel between July 24 of 1974 and April -- excuse me, May, or whatever the day's date is, the 19th or the 20th, but not to do anything with this case.

MR. SHAW: It being moot.

THE COURT: The contract, as I understand it, has run out; is that correct?

MR. MANGAN: Correct.

THE COURT: Then what relief can this Court give you?

MR. SHAW: He is not seeking any relief.

THE COURT: What is the purpose of this hearing or this trial?

MR. MANGAN: That is up to Mr. Shaw.

THE COURT: You mean, the purpose of this trial is up to Mr. Shaw? You're wasting the Court's time.

MR. MANGAN: Mr. Shaw is seeking defenses.

He is seeking a revocation.

THE COURT: Withdraw it.

Do you withdraw this trial? The contract has terminated, it has run out.

MR. SHAW: We have not renewed it.

I am not prepared to withdraw the proceedings, Judge.

THE COURT: How can you seek a revocation of a contract that is now no longer in force?

MR. SHAW: We have moved to terminate.

THE COURT: To terminate what? It is terminated --

MR. SHAW: By itself. Perforce, by itself.

THE COURT: By time, by the element of time.

What are we doing here?

MR. SHAW: Judge, if this is withdrawn --

THE COURT: Do you want an official revocation of a contract that has expired? It's absurd.

MR. SHAW: No, it isn't, Judge.

THE COURT: Are you thinking of damages?

MR. SHAW: Yes, I am.

They filed a claim here, Judge.

THE COURT: As to the claim, they are entitled to file a claim.

Are you seeking damages for breach of contract for a period of time while they were in Chapter XI?

MR. MANGAN: During the Administration period, yes, your Honor.

MR. SHAW: Let him file his claim.

THE COURT: He is deeming that as an administration claim, I assume, so how --

MR. SHAW: Your Honor, that is why --

THE COURT: That is why you are seeking a formal rejection by Court Order.

Is that the difference between you?

MR. MANGAN: That's what Mr. Shaw said.

My position is that the executory aspect of the contract terminated on March 31st. That any rights that I am entitled to are covered during that period.

THE COURT: Gentlemen, can we conclude this trial, and submit possibly an agreed statement of facts? Is there any way that the two of you can agree on a statement of fact and submit memorandums of law?

MR. SHAW: I have no objection to him submitting --

THE COURT: I see no end to this.

MR. SHAW: I see one thing.

I will quote Judge Mishler on Page 20: Mr. Mangan, I understand that you have delayed the proceeding before Judge Parente. In fact, if this temporary restraining order is extended it is of your own doing and this has gone on since July. We have had depositions and he has examined no less than five different people. They are all here. Maybe thousands of dollars have been spent in examinations of five different people and Mr. Binder and anyone connected with this. This has gone on ad infinitum. There is a matter, tangential, in the Courts of Appeal, the National Labor Relations Board and arbitration, having nothing to do with the proceeding.

I say this is constantly going on and

there is never an end of this, and this is only our case.

I will accept his statement of fact, what I call an offer of proof, and if I have any [illegible]ions, I will agree with him on a statement of fact and let it go in, but I am moving to have that contract declared revoked under the Kevin Steel Case, on the right to terminate that executory contract.

I am not looking for a severance position as I had with the 852. I don't want that, but I want a formal termination as to the date that we executed it, so I will know where we are.

MR. MANGAN: What do you mean by execute?

MR. SHAW: From the date I filed these proceedings, it goes retroactive to the date that I filed the proceedings. I want to have that terminated as of that date.

If he wantsto submit a statement of fact, I have no objection.

MR. MANGAN: If I understand, --

THE COURT: And since then, the contract

has run out in its own course.

MR. SHAW: But I have the problem of the question of what the future may hold.

THE COURT: I do not know if you will have a problem. It will be a matter for this Court to decide, and possibly, we would have an issue that would be narrow.

MR. SHAW: Let him submit the statement of facts, because I can see now that this can go on and on --

THE COURT: It will not go on and on in this Court.

I will just refer it to the District Court. I don't have time for it. I just don't have time for it and I am neglecting the rest of my cases which number over 1200 because of this, and I just cannot do it in this fashion.

MR. SHAW: I agree with your Honor. .

MR. MANGAN: Your Honor, you have hit the nail on the head. It is absurd to seek a rejection to the executorycontract after the contract has already expired.

THE COURT: Will you waive any potential

damage that you may have incurred from the period of this Summons and Complaint being served to reject the contract?

MR. MANGAN: No, no.

THE COURT: This is why he wants a rejection going back to that period of time.

MR. MANGAN: Then I have no other alternative but to develop a record that this was not an onerous and burdensome contract.

THE COURT: You are going to do it over the next two years.

MR. MANGAN: I do not think it will take over the next two years if we had the documents.

MR. SHAW: Is the case finished after this? I can't believe it.

MR. MANGAN: After what?

MR. SHAW: After you cross-examine Mr. Binder, is your case over?

MR. MANGAN: I believe so, yes.

THE COURT: That is the end of it?

MR. MANGAN: Yes.

THE COURT: Get those damn documents and put them in the record. Get the damn exhibits here today.

MR. SHAW: They are on their way, your Honor.

THE COURT: They should have been here earlier.

All right, we will take the next case. We can't proceed without those exhibits.

MR. MANGAN: I came here for those Exhibits, your Honor.

MR. SHAW: Other than questions on those Exhibits --

THE COURT: You're absolutely justified.

MR. SHAW: Other than questions on those Exhibits, are you through with Mr. Binder?

THE COURT: I don't understand why those exhibits are not here.

MR. SHAW: Judge, it was an error. He took the wrong file. The young man made a mistake, your Honor.

THE COURT: He is too bright a young man to make that simple mistake.

MR. SHAW: He did make that error, your

Honor.

THE COURT: All right, I will accept that.

Let's go to the next case.

(Whereupon, at 3 p.m. a recess in this case was declared.)

* * *

(Whereupon, the within proceedings resumed at 4:15 p.m.)

THE COURT: All right, let's go ahead.

CROSS-EXAMINATION

BY MR. MANGAN (Cont'g):

Q Mr. Binder, with respect to Buzzuto, you stated that you were using Buzzuto's services up to the time of the Petition.

After the Petition was filed, did you continue to use Buzzuto's services?

A I did, yes, but not services. They are grocery wholesalers.

Q After you closed the grocery warehouse, did you increase the number of loads coming from Buzzuto?

A We closed the grocery warehouse when we broke up the volume between Buzzuto and I guess at the time, Filigree. Approximately two-thirds -- one-third, we will say.

Q So that there was an increase from Buzzuto?

A No, no. There was an increase to everyone, because we were working out of our own warehouse before.

Q After you decreased your own warehouse, you increased the number of loads coming from Buzzuto?

A No. I don't know, because the bulk amount of that coming from Buzzuto could be comparable to loads that were going direct to the stores in dollar amounts. It could have been the same. I am not sure.

Q The number of loads coming down, when were they increased?

A I don't know.

Q During the period until July 18, 1975, the date between the closing of the warehouse and that date, you had the services of Buzzuto with deliveries being made from Buzzuto'swarehouse down to Bohack's Terminal; is that correct?

A What date again?

Q Between the date you closed the warehouse, the grocery warehouse on July 18 of 1975?

A When did we close the grocery warehouse?

Q Whatever date it is.

A January '75.

Q Between January of 1975, if that is the date that you closed the Bohack warehouse until July 1975, you had Buzzuto loads going down to Bohack Square; right?

A What was -- I would have to find the date that we closed the meat and deli warehouse.

Q Is that the last date that you employed 807 people?

A Yes.

Q That is July 18, 1975?

A Okay.

Q You closed the meat and deli warehouse on that date?

A Okay.

Q Between the date that you closed the grocery warehouse and July 18, of 1975, the Buzzuto loads were coming down to Bohack Square?

A That is correct.

Q When you closed the Bohack Warehouse, you discontinued the use of all 807 personnel; is that correct?

A What Bohack warehouse? Which one? Bohack Square?

Q You closed down the last aspect of Bohack Square, the meat and deli warehouse?

A Right. Okay, right, that is correct.

Q So from July 18 on, you didn't utilize 807 people, although you continued to receive from Buzzuto?

A That is correct.

Q Did you increase or decrease the number of loads that you received from Buzzuto after July 18, 1975?

A I would assume they are comparable.

Q They remained the same?

A I can't say the same, but comparable. In that general ballpark, because Buzzuto is a dry grocery warehouse.

Q Is that all you received, groceries?

A Groceries, the dry grocery warehouse was closed in January of '75, so we have to assume it is the same number after July of 1975, and it should be comparable, yes.

Q I show you Petitioner's Exhibit A in evidence and I refer you to --

THE COURT: Who is the Petitioner?

Q Plaintiff -- rather, Bohack. Bohack's drivers' deliveries to stores, and the 70 dollar figure. I ask you what that represents.

A The total of these two figures, at one point when 807 was picking up at Buzzuto's warehouse in Cheshire, Connecticut. The Bohack drivers would go in themiddle of the night from Bohack Square to Cheshire, Connecticut and pick up loaded trailers and then bring them back to Bohack Square. That was the dollar cost.

Q What I am asking you -- let me finish -- what I am asking you, my question to you is, is the $70 figure there -- and I am asking you what that $70 represents?

A This is the cost of the delivery from Bohack Square to the Bohack Stores only.

Q Well, that delivery, that amount of money, that represents a cost to Bohack for the services of the drivers based on an eight-hour day?

A I would assume so.

Q So that the cost of the labor, including fringe benefits, would be eight into seventy, or eight dollars and seventy-five cents per hour?

A Go slow. I did not do the calculation.

This says total cost per load and you are assuming that it takes eight hours to produce and this is only half of the equation. The other is picked up from merchandise going from Bohack

Square to Buzzuto to Connecticut, back to Bohack Square. Then, there is the second set of drivers taking it from Bohack Square to Bohack Stores, which is all in this $70 figure. I can't tell you the breakdown of the 70. It says salary and benefits, $70. I can't tell you how the computation was derived.

Q Assuming that that represented an eight-hour day, that the cost to you, if you calculated them for wages and fringe benefits would be eight into $70, or $8.75 per hour -- is that correct?

A You are doing an assumption. I can't answer your assumptions.

Q Do you know on what basis the information supplied on Plaintiff's Exhibit 1 was calculated and based?

A No.

Q Do you know anything about the numbers that are on that Plaintiff's exhibit?

A I know that the numbers were worked up by our accounting department, and that this is a final compilation of those numbers.

Q But you did not prepare that and you do not know exactly what was incorporated and what assumptions were made when that document was prepared?

A No. I didn't prepare these numbers, which you said before, but I never had a chance to correct.

Q But it is your testimony that with respect to labor rates, that the rates of the Shopwell drivers, the Buzzuto drivers and the Hills' drivers are all comparable rather to Local 807's rates?

A To the best of my belief, and I am not intimately knowledgeable with the contract, but I would think thatthey were comparable.

Q In your judgment with respect to the rejection of the 807 contract, it had nothing to do with the labor rates of either the Shopwell drivers, the Buzzuto drivers or the Hills' drivers?

A Our problem was an overall warehousing and trucking --

Q Yes or no? With respect to the rejection of this contract, it has nothing to do with regard to labor rates, including all of the benefits included within those contracts, as compared between the 807 Contract and the contracts that are in existence for Hills', Shopwell or Buzzuto?

MR. SHAW: I object to the form of the question. I don't even understand it.

MR. MANGAN: I will rephrase the question.

Q In seeking to reject the 807 contract,you are not saying that there is a variance that is significant between the 807 Contract and the contracts that are or were in existence for Hills' drivers, Shopwell Drivers or the Buzzuto drivers?

A That is correct.

Q With respect to any of the information that is contained on Plaintiff's Exhibit 1, you are not familiar with it enough to explain it?

A I didn't prepare the numbers. I am familiar enough to explain the numbers.

Q Did you go through the document yourself?

A I went through that finished document. I didn't prepare the numbers, per se.

Q When I asked you, though, with respect to the assumptions that are made with these numbers, how many hours were involved, and on what basis these numbers are calculated, you don't know what information was used and what assumptions were made with respect to those numbers?

A I don't know the actual assumptions that were made or the specific details. The overall concept of this and the assumptions going into the overall, I am familiar with, but I don't know if they divided an eight-hour day or a seven-hour day.

Q You don't know when you use a figure with respect to the 807 loads, whether or not the drivers were only going to perform one load a day or there would be a second load or how many stops there may be on the load? All of those assumptions you are not familiar with?

A No. All of this was done on apples to apples basis.

As I said, they are figuring what it would cost us in the present operation as opposed to going at that time with Shopwell.

It says here total cost per load. No one's asking how many loads per week. This is total cost per load.

At that time, we took our figure here and applied it on the same basis to Shopwell, what it would cost us on an overall.

Q I am just concerned with the trucking operation.

A Yes, the overall is the warehouse and trucking, obviously.

Q What I am saying, you have salary and benefits for the 807 Contract at $70., $70.per day, or $70, I should say. You don't know if that $70 reflects a full day to deliver that load or whether or not a driver will come back and make two or three loads that day?

A This says per load.

Q Is the assumption made that the driver is only going to make one delivery?

A What difference does it make if he makes two deliveries?

Q It does make a difference.

A Well, then, it would be $140 per day.

Q Are you saying that 807 drivers get paid $17.70 per hour?

A How did that come into it?

Q You have doubled the amount of $70. If they were making two loads per day, they would be getting paid $140 per day.

A You can look at the contract, and then we would know exactly what the eight-hour day salary and benefits are. We have a contract here, if you wish to look it up, but I would think it is closer to a $50 figure.

Q If I say to you that that $70 reflected an eight-hour cost including fringe benefits, and if the driver instead of making one load per day would make two loads per day, then instead of it being double, as you referred to earlier, it would be actually half to $35, per load?

A I had never seen too many drivers who did two loads a day when you have stores in Nassau and Suffolk Counties.

THE COURT: The answer is yes, if they did it, obviously.

A Yes.

THE COURT: It is so basic. It is so basic that I don't see why it wouldhave to be argued.

It's a supposition and it is predicated on certain figures that are set forth before you. It is obvious that if two loads were made, it would be double the cost.

MR. MANGAN: Half the cost.

THE COURT: Or half the cost, I should say. I do not see where we are getting at with this.

Mr. Mangan, I still do not know where we are getting with this.

MR. SHAW: I know, but I was going to let him complete it. I didn't want to interrupt, but I think it is totally irrelevant.

THE COURT: These are all generalities.

Q How many drivers lost employment with Bohack as a result of your move to Shopwell?

A I do not know the exact number.

Q Approximately?

A I would say 30 of a hundred.

Q When you went to Shopwell, those drivers lost --

A I am sorry, excuse me, did you say to Shopwell?

Q On to Shopwell.

A In which stages?

Q The first stage?

A In the dairy produce or later, when we did the meat and deli?

Q The first stage?

A I would not know. I would be guessing. I would think 30 in the produce and the dairy. Just as a guesstimate maybe 30.

MR. SHAW: I have to object to this line of questioning, absolutely, the amount of employees thathave been terminated by way of being laid off is totally irrelevant to the issues. I do not --

THE COURT: I don't know. It may be subject to some valid connection.

Q When those individuals lost employment opportunity and if I told you that the number was 60, would you dispute that?

THE COURT: Don't dispute it.
Answer if you know.

A I do not know. I can't dispute it.

THE COURT: Do you have the figures before you?

MR. MANGAN: Well, I believe that it has been stated in other proceedings that it was 60.

THE COURT: Let's assume it is 60. We will take that as a reasonable assumption.

Q Taking it as a reasonable assumption there wasn't employment opportunity in other aspects of the Bohack operation for those 60 drivers who lost their employment?

A Who lost their employment?

Q Yes.

A Now, are you saying was there other opportunity for them?

Q Were there other opportunities or did they lose their employment?

A They lost their employment.

Q With their loss of employment, they lost seniority, they lost health and pension coverage and they lost all other fringe benefits under the contract; is that right?

A Yes.

Q The health coverage that those individuals enjoyed while they were employees of Bohack included Blue Cross, Medical, Surgical and Dental care?

THE COURT: Would you concede that they lost all benefits, all contract benefits?

MR. SHAW: Yes, I would.

THE COURT: Would you concede that?

THE WITNESS: Yes.

MR. MANGAN: I want to make sure that the record has what the benefits were?

MR. SHAW: We know what the benefits were, benefits of the contract, and the contract speaks for itself.

THE COURT: The contract is in evidence.

Q Would you say that the same is true when you increased the work that went to Shopwell, so that they were now performing the dairy work, the meat and deli deliveries --

MR. SHAW: Same stipulation.

Q -- and this was at a loss of work opportunity and loss of employment for 807 drivers?

A Yes.

Q And the loss of the same benefits?

A Yes.

Q When you utilized the services of Krasdale for the delivery of groceries, this resulted in a loss of employment and a loss of benefits to your employees?

A Yes.

Q When you went to Hills for delivery to the stores directly without the use of the 807 drivers, this was a loss of employment to those drivers?

A No. This was a loss to Shopwell's drivers. Whatever were those benefits, Shopwell drivers lost the employment then.

Q I am talking about Buzzuto at that time.

A You said Hills . pardon me.

THE COURT: Let the record show that all of the former employees lost all contract rights by virtue of thechange in operation from a terminal status to a direct route delivery.

Is that correct?

THE WITNESS: That is correct; that is true.

Q You filed this rejection proceeding on July 18, 1975?

Is that right?

A That's correct.

THE COURT: Let the record show that the Summons and Complaint --

MR. MANGAN: It wasn't the Summons and Complaint. It was an Order to Show Cause initially.

THE COURT: Where is the original Order to Show Cause?

MR. SHAW: I have a copy.

THE COURT: Will you give us thedate of it, please?

MR. SHAW: Yes.

THE COURT: Do you have the date, Mr. Mangan?

MR. MANGAN: July 18, 1975.

MR. SHAW: I can supply it.

By way of Order to Show Cause, July 17th.

The Order to Show Cause is dated July 17th, and thereafter, we amended and made it an adversary proceeding on July 18, 1975.

THE COURT: All right, go ahead.

Q What change in circumstances took place between July 17, 1975 and July 18th, that warranted the discontinuance of the 807 drivers from the performance of the Buzzuto work?

A The decision was made as we were notified about that time, that foreclosure proceedings, I believe, had started on Bohack Square and that we were going to have to vacate Bohack Square and close it up completely. The decision was made to close up the remaining facility, which I believe was the deli and meat warehouse; that we no longer could use Bohack Square as a staging area because the foreclosure proceedings had started and we now proceeded to do everything on a direct store basis.

THE COURT: **Wasn't there a stay of that** foreclosure proceeding?

THE WITNESS: I would have to ask Mr. Shaw. I am not familiar with that.

MR. SHAW: There was a stipulation entered into, your Honor, there would be a stay of the foreclosing, foreclosure proceedings for a period of time. Yes, your Honor, there was a stipulation to that effect.

Q Isn't it a fact that --

MR. SHAW: Let me finish my statement.

There was a Summons & Complaint served before that, and I moved on the stay then. As a result, there was a stipulation.

MR. MANGAN: At no time did the Bohack Corporation lose title to Bohack Square; is that right?

MR. SHAW: No.

THE WITNESS: No.

MR. SHAW: Bohack is still in title.

MR. MANGAN: Still in title?

MR. SHAW: Yes.

MR. MANGAN: And there was no period when Bohack was out of title during the period of the collective bargaining agreement?

MR. SHAW: No. Bohack always has had title.

Q That was the only justification, the only reason, the only thing that took place between July 17th and July 18th, when you terminated the Bohack truckdrivers?

A No, not alone; not alone. When the decision was made to close up the last remaining Bohack facility, of course, this was at the insistence of the Creditors Committee and their auditors, that it was a losing proposition to keep the meat and deli warehouse operation, that the meat and deli business went to Shopwell, who at their insistence made us give in to having their drivers do the delivery and under those conditions only. Now, previous to that, or around that time, Filigree filed a Chapter XI Proceeding.

We then,overnight we didn't know about Filigree until we found out that they weren't shipping any more food and we had to get another source of supply for groceries and the only one that was available to us that would sell to a Chapter XI Company and with the way we paid our bills and with no letters of credit, was Krasdale.

Krasdale is also up in the same area as Shopwell, in the Hunts Point Area and they, too, absolutely refused to allow any of our drivers to come in, because to us it made no difference who delivered to the grocery stores, be it 807 or 277 or 202, or whatever teamster --

THE COURT: Is there any other question, Mr. Mangan, before we adjourn?

A So that Krasdale, again, if we wanted groceries, we had to adhere to Krasdale's demand that they deliver to the stores direct.

The only thing that was left was Buzzuto delivering the loads or having 807 drivers go up to Cheshire, Connecticut and to bring the loads down to Bohack Square and then to deliver to the stores, and which this computation here shows.

It was extremely costful, but what we were trying to do was to keep 807 alive and keep jobs, but had to close all of the warehouse facilities, and then Buzzuto heard about us going to Krasdale and then he started to get flack from his union up in Connecticut, about allowing 807 to come into his warehouse to pick up. The decision was made with Buzzuto that he would start delivering directly to the stores with his drivers and we would be out of everything completely, once and for all.

Q Wasn't there a period of time before July 18th and including July 18, when Buzzuto drivers were bringing loads down to Bohack Square and the Bohack drivers were making their deliveries to the store and the 807 drivers weren't going up to Cheshire?

THE COURT: Yes or no?

THE WITNESS: I am sorry, he will have to ask it again.

THE COURT: We are going to put this matter over to some other day.

Gentlemen, give me a day.

MR. MANGAN: Your Honor, I just need to cover this area and we will be finished.

THE COURT: How long will that be?

MR. MANGAN: Fifteen minutes.

THE COURT: I have to pick up my daughter at Hofstra. I cannot give you 15 minutes. You can come in tomorrow and I will put you at the head of the calendar.

MR. SHAW: I can't be here tomorrow. I have to --

THE COURT: I know about that. You won't complete in 15 minutes. The way you are asking your questions, Mr. Mangan, it takes five minutes to get an answer to your question, the way you are posing it. I am not saying that in any derogatory sense.

MR. MANGAN: I did not accept it in a derogatory sense, but it takes this witness five to ten minutes to answer my questions.

THE COURT: Maybe I exaggerated. The witness is answering, lengthily but maybe to emphasize a point.

MR. SHAW: The witness is answering his questions.

MR. MANGAN: I just have a few more questions in this area.

THE COURT: But it is taking a long period of time.

MR. MANGAN: Yes, that is true, your Honor, but I think we can finish it up.

THE COURT: It is impossible to go any further, 15 minutes, I cannot spare and you will go over 15 minutes.

MR. MANGAN: I won't go over 15 minutes, I'm telling you now.

THE COURT: All right, go ahead, proceed.

BY MR. MANGAN:

Q Mr. Binder, thequestion to you was during the period before July 18th and going back for a few months, isn't it a fact that the Bohack drivers were not going to Cheshire, Connecticut, Buzzuto drivers were bringing those loads down and you were utilizing Bohack Square as a staging area for the delivery of the grocery loads to Bohack Stores?

A Yes.

Q Was there any other reason that you have not stated for the discontinuance of the 807 drivers from making deliveries from Bohack Stores to the stores?

Those deliveries I am referring to are the ones that dealt with groceries and the groceries coming from Buzzuto?

A We closed the terminal down.

Q Didn't you continue to have Truck Fleet offices at Bohack Square?

A I have one mechanic there that does our automobiles and air-conditioning maintenance trucks, yes.

Q Aren't all of these trucks utilized by Bohack for the maintenance of the stores? Aren't they kept there?

A I said the air-conditioning maintenance trucks, I think there are seven of them. They are not kept there, they are maintained there.

Q They are maintained there?

A Yes, with one mechanic; that's all we have.

Q Where are their terminals at?

A Either the houses of theair-conditioning mechanics or a garage facility in Suffolk County or Bohack Square, but we let the people take the equipment home.

Q But Truck Fleet continues to maintain their offices there?

A Yes.

Q So Truck Fleet, being the wholly-owned subsidiary and owner of that equipment, they were there on July 18th and they continued to be there to see that the trucks that were left there were safe and were not broken into in any way?

A The guards --

THE COURT: Yes or no?

A Yes. Yes, yes.

THE COURT: Frankly, I do not see how this in any way is germane.

Q During the period between June 30, 1974 and July 18, 1975, did the debtor-in-possession pay the wages to the driv[illegible] set forth in the Local 807-Bohack co[illegible]

A Yes.

Q Did they deduct the union dues to Local 807 in accordance with Local 807's contract?

A Yes.

Q Did they make contributions to Local 807's labor management, health and pension fund?

A Yes.

THE COURT: It sounds familiar to me, Mr. Mangan.

Q Did you, during the course of that period engage in grievance proceedings between --

MR. SHAW: Objection, your Honor.

THE COURT: Let him finish his question.

Q Engage in any grievance procedures in accordance with the contract?

A Yes.

Q Did you proceed before the New York City Joint Local Committee on two occasions with respect to disputes involving the transfer of work between the filing of the petition and July 18, 1975--

A Yes.

Q -- the filing of the Order to Show Cause on July 17, 1975?

A Yes.

Q Did Bohack pay all overtime payments to its drivers in accordance with the Local 807-Bohack Contract?

A Yes.

Q You stated that there was a reduction in cost between the Shopwell operation and the Hills' operation. When you went from Shopwell to Hills there was a reduction. Are you going back to Shopwell, next week?

A Yes, hopefully.

Q What is going back to Shopwell? What type of merchandise?

MR. SHAW: I am going to object to what we are going to do in the future.

THE COURT: There is no point in objecting. I agree. I do not see how this is pertinent to the issue before me, but by objecting, you are just delaying the close of this trial.

MR. SHAW: That is why -- all right.

A Produce, dairy, deli and meat.

Q The groceries will continue to be supplied by Buzzuto and Krasdale in the same proportion that existed on July 18, 1975?

A The stores are not in the same proportion. Buzzuto supplied more groceries to us than Krasdale.

MR. MANGAN: I have no further questions.

MR. SHAW: You rest?

THE COURT: Both sides rest?

MR. SHAW: We rest, your Honor.

MR. MANGAN: Your Honor, at this time, I move to dismiss the Complaint on the basis that the Plaintiff has failed to establish a prima facie case, has failed to establish that this was an onerous, burdensome contract or that they did not assume as a debtor-in-possession, the termsand conditions of the contract between the Bohack Corporation and Local 807.

THE COURT: They assumed, did you say?

MR. MANGAN: They assumed.

THE COURT: What do you predicate that on?

I didn't hear any testimony to the effect that they assumed the contract.

On whose testimony? Whose testimony is it predicated?

MR. MANGAN: The testimony of Mr. Binder. They applied the terms and conditions of the contract between the Bohack Corporation

Local 807 totally and completely during the period between the date that they filed a Chapter XI Petition and July 18 of 1975.

That under the Kevin Steel Case and the **R.E.A.** Case, there is an implied assumption of the debtor's contract.

MR. SHAW: May I respond?

THE COURT: If you want to.

MR. SHAW: You are alluding to the payments of health and welfare benefits, overtime, vacation payments or any of the items that may or were due to those people.

I don't assume that -- I don'tdeem that as being an assumption of the company. I deem that the Court would have directed that it be paid as an administrative expense up until July 17, 1975, and we were dutybound to pay that.

I do not think that reflects in any way assumption of contract.

On the contrary, we moved to disavow on July 17th and that is the day we sought to terminate and we took care of all our obligations that accrued prior to July 17th, not subsequent thereto.

THE COURT: Gentlemen, do you want a decision off the bench or do you seek an opportunity to submit briefs?

MR. MANGAN: I submit an opportunity to submit a brief.

MR. SHAW: If he wants to make a brief --

THE COURT: How much time do you want? I was ready to decide the matter off the bench with certain findings, but certainly you are entitled to a brief and I will reserve decision.

MR. MANGAN: Your Honor, I will waive the filing of the brief.

THE COURT: I am sure you would take an appeal, eitherof you, I may as well do a written opinion with the proper findings, formal findings, so that you would have a record on appeal.

MR. MANGAN: There is one other basis I want to add, although I indicated it today. That as far as the rejection of an executory contract, there are no aspects of that contract to continue to be executory, since the contract terminated on March 31st of 1976.

As a terminated contract, there is nothing to be proformed in the future by Bohack in any dispute that exists only or for the period through March 31, 1976.

That this does not constitute at this time an executory contract in any shape or form, and there is no basis under the Rule, Section 313, L, for the rejection of the contract at this time.

MR. SHAW: Since he waived his right to file a brief, Judge, I think you can now decide.

I think you indicated what your decision is to be and we can make a record of that decision, findings of fact, and it would be dispositive, the matter, and then he would be considered to be the judgment.

THE COURT: In view of all of these aspects that have developed, where the contract, in effect, has expired, pursuant to its own terms, I think the entire matter is a nullity.

With reference to any rights that the union may have had during the period in issue, I find that the contract terms for that period of time would have constituted a burdensome and onerous burden to the debtor and a peril to its rehabilitation efforts.

Consequently, for that period of time, the contract is deemed rejected.

With reference to an implied assumption, I find that there is no merit absent any substantive evidence of assumption and I give no weight to the Defendant's assertion of a doctrine of law.

Judgment is for the Plaintiff. The Contract is deemed rejected for the period in issue.

Parties are to settle judgment.

MR. MANGAN: Your Honor, may I ask one question with respect to that?

THE COURT: Yes.

MR. MANGAN: You referred to a part of

your findings that the proceedings is a nullity.

I find that difficult to square with the subsequent findings, that the contract is rejected for the period of to March 31, 1976.

THE COURT: I qualified that and made it nullity as to the date of expiration following that period of time, merely to clarify the fact that I do deem it important for the period in issue.

The rejection pertains to that period because that is the only period that has any validity.

Subsequent to that period of time, there is no contract, obviously; but there was a contract during the period of time in issue and as to that time, I deemed the contract had been properly rejected.

MR. SHAW: Thank you, your Honor.

(Whereupon, at 5 p.m. the proceedings terminated.

* * *

I hereby certify that the foregoing is a true and accurate record of the Minutes of this hearing.

Depositions of Joseph Binder, Arthur Leshin and Robert E. Gambeski—Defendant's Exhibit A-a

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK - BANKRUPTCY PART

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In the Matter of

THE BOHACK CORPORATION, Debtor in Possession.

---x

THE BOHACK CORPORATION Debtor in Possession,

Plaintiff,

-against-

TRUCK DRIVERS LOCAL UNION NO. 807,
INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
CHAUFFEURS, WAREHOUSMEN AND HELPERS OF
AMERICA,

Defendant.

---x

249-26 Northern Boulevard
Little Neck, N. Y.

December 12, 1975
12:50 o'clock p.m.

Depositions of the Plaintiff, THE BOHACK CORPORATION, by an officer, JOSEPH BINDER, and employees ARTHUR LESHIN and ROBERT E. GAMBESKI, taken by the Defendant.

[illegible] EXD [illegible]
5-11-[illegible]

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oOo

[illegible]SEPH BINDER, having been first duly sworn by a Notary Public of the State of New York, was examined and testified as follows:

EXAMINATION BY MR. MANGAN:

Q What is your name?

A Joseph Binder.

Q Where do you reside?

A 506 Links Drive East, Oceanside, New York.

Q Are you currently employed?

A Yes.

Q With whom?

A The Bohack Corporation, debtor in possession.

Q In what capacity?

A Executive vice president.

Q Prior to the petition being filed on July 30th, 1974, what position did you maintain with Bohack?

A I was president.

Q How long were you president?

A Approximately eight years.

Q During the period prior to the petition being filed, did you maintain a warehouse at Bohack Square in Brooklyn, New York?

A Yes.

Q For how long a period, prior to filing the petition, did you maintain that warehouse?

A Many years. I've been at Bohack ten years, and it was maintained at the time I started my employment.

Q Was there a collective bargaining relationship between Bohack and a labor organization covering the warehouse employees?

A Yes.

Q Who was that bargaining relationship with?

A The grocery warehouse was Local 852 of the I.B.T., which also covered the produce warehouse. The meat and deli warehouse was covered by Local 174, Amalgamated Butchers of North America, and the dairy warehouse was covered by Local 852 of the I.B.T.

Q Did Bohack maintain a collective bargaining relationship with a labor organization, prior to the petition being filed, covering the drivers?

A It did.

Q After the petition was filed, did a collective bargaining relationship continue between Boh[illegible] and all of the labor organizations that you referred to?

A I'm not that cognizant of the bankruptcy law, so I don't know the legal status of the contracts when we filed, but we had -- we still employed the men of the various unions.

Q Did you continue, after the petition was filed, to pay the terms and conditions set forth in each of those labor agreements, to the employees who were covered by the agreements?

A We did.

Q Did there come a time when the relationship between Bohack and Local 852 was altered by a termination of the warehouse employees that were represented by that labor organization?

A I don't know what you mean by altered, but we closed because of the Chapter 11 and the reduction of stores and the credit problem that we had, it was decided, the combination of our Board of Directors and the credits committee, to close the grocery -- I believe it was first the produce and dairy warehouses, and then, later on, the grocery warehouse.

Q When did you close that portion of the Bohack Square operation that dealt with produce and dairy?

A Approximately the middle of December, 1974.

Q When did you close that portion of the Bohack Square operation that dealt with groceries?

A About the middle of January, 1975.

Q Same question with regard to deli?

A Deli and meat, about the middle of July, 1975.

Q Same question with respect to bakery.

A We never had our own bakery, but we had a distribution center for bakery, where we brought in bakery products pre-packaged.

We closed the bakery distribution center approximately the same time we closed the produce and dairy.

Q You stated that the produce and dairy were closed out mid-December, 1974. Is that correct with respect to dairy?

A That's what I stated.

Q At the time that you filed the petition, did you file with the Court a list of your executory contracts?

A I don't know, I didn't handle that.

MR. MANGAN: Did counsel?

MR. LEVINE: Yes.

MR. MANGAN: Were the labor agreements between the labor organizations that you referred to and the Bohack Corporation listed as executory contracts at that time?

THE WITNESS: I don't know.

MR. LEVINE: Yes.

Q Approximately how many truck drivers did you have in your employ at the time that you closed out the produce and dairy warehouse, which is mid-December of 1974?

A I don't know.

Q An approximation?

A I would think some place, oh, about a hundred or so. I don't know the exact number.

Q At the time that you closed out the produce and dairy sections of Bohack Square, did you make arrangements for produce and dairy to be delivered to your stores from another location?

A When we closed our produce and dairy warehouses, we then went to an outside wholesaler.

Q What was the name of that supplier?

A Produce and dairy, it would be Shopwell, Incorporated.

Q Did you enter into an agreement with Shopwell with respect to the distribution from the Shopwell warehouse to the Bohack stores?

A I entered into an agreement with Shopwell to supply us produce, dairy and bakery products, delivered F.O.B., Bohack stores.

Q Did that agreement go into effect during mid-December, 1974?

A It did.

Q The equipment that was utilized by the Bohack drivers prior to the petition being filed, was that equipment owned by Bohack?

A No, it wasn't.

Q What type of equipment did you have at that time; was it all tractors and trailers?

A It was trailers, tractors, basically; dry and refrigerated boxes.

Q By whom were those boxes and other equipment owned?

A Substantially at that time it was owned by Truck Fleets of New York, Inc.

Q Was there anybody else, other than Truck Fleets, that had an interest in any of that equipment?

A Yes.

Q Who was that?

A Leaseway Corporation in Cleveland, Ohio is a guarantor on substantially a good portion of the financed paper that Truck Fleets purchased from various vehicle suppliers. For example, Frueof, Clark, Highway, Great Dane; there may have been some others.

Q But title to all the equipment that was utilized by Bohack for deliveries to its stores, prior to the petition, was in the name of Truck Fleets of New York, Inc.?

A Not necessarily in that respect. The titles, although they are in the name of Truck Fleets, are held by Leaseway, who is a guarantor of the paper of Truck Fleets of New York.

Q But who registered the equipment with the agencies of the State of New York?

A Truck Fleets of New York.

Q During the period between the petition being filed, and the closing of the produce and dairy warehouse in mid-December of 1974, did that same relationship exist, that Truck Fleets of New York, Inc. was the registered owner of the equipment, and that equipment was utilized for deliveries from the Bohack warehouse to the Bohack stores?

A Well, to the part of the question that Truck Fleet is the registered owner of the equipment.

Q And it was being utilized, that equipment was being utilized for deliveries from the Bohack warehouse to the Bohack stores?

A That's correct.

Q Prior to the petition being filed, did Bohack receive groceries from Bozzuto?

Bozzuto being, I believe the correct name is Bozzuto, Limited?

A Bozzuto, Inc., Cheshire, Connecticut.

Yes, Bohack received groceries from Bozzuto prior to the filing of the petition.

Q And what was the standard procedure for the pick up and return of those groceries from Bozzuto's, Cheshire, Connecticut facility?

A Prior to the filing of the Chapter 11 petition, Bohack had a serious credit problem and, in order to keep its stores supplied, it was not receiving the proper merchandise from the national manufacturers, Bohack had to look for a supplementary wholesaler to supply the stores.

The arrangement that was made at that time, prior to the filing of Chapter 11, with Bohack's severity of working capital and lack of credit from manufacturers, that the purchasing of groceries from Bozzuto was made in the following fashion:

Bohack drivers would go up to Cheshire, Connecticut and pick up truck loads of groceries, bring the same truck load of groceries back to Bohack's grocery warehouse, and would pull into Bohack's grocery warehouse and have these groceries put into the warehouse, on to the racks, in addition to the other manufacturers that were still shipping Bohack, and from there the product was selected out of the grocery warehouse, reloaded by store back on to Bohack trucks, and then delivered to the stores.

Q What was the jurisdiction of the Local 807 contract?

MR. LEVINE: Do you want to rephrase that, in terms of jurisdiction?

MR. MANGAN: Jurisdiction meaning did it govern only the driving of the trucks, or did it include the loading and unloading of the trailers when they were backed into the warehouse platform.

MR. LEVINE: This related to the grocery warehouse?

MR. MANGAN: Related to the grocery warehouse.

Q (Continuing) And with regard to the Bozzuto operation, when they brought the loads down from Bozzuto, and the groceries were taken out of the trailers and merged with other groceries within the warehouse, who participated in the unloading of those trailers?

A I guess -- I'm not sure, but I would assume that the unloading of the merchandise from Bozzuto's that was on the Bohack trailers, in those days was done by the warehouse union Local 852.

Q And that the truck drivers participated in the driving, the going up to Cheshire and coming back from Cheshire with the loads, and also the deliveries from the terminal at Bohack Square to the stores, but did not participate in the unloading or loading, or in the warehousing of any product at Bohack Square?

A Are you asking me a question, or are you telling me?

Q I'm asking you a question.

A Would you rephrase it, please?

MR. MANGAN: Repeat my question.

(The reporter repeated the last question.)

Q If you think that that was a statement, is it a correct statement?

A Yes, that Bohack drivers performed basically a driving function only.

Q For what period of time did Bozzuto supply Bohack with groceries prior to the filing of the petition, approximately?

A I would think a few months prior, when things got to be very severe at Bohack and Bohack was running in its normal warehouse operation approximately a 50 per cent out-of-stock condition, we then went seeking the existence of an outside grocery wholesaler. I would say a few months before the filing of the petition.

Q Prior to the petition, who was in charge of the purchase of meat for Bohack stores?

A Meat?

Q Yes. Did you have somebody on the Bohack payroll that was in charge of purchase of meat?

A My vice president of perishables was Jose[illegible] Kranz.

Q Who is Ed Checchia?

A Ed Checchia is the head of our meat operations at the present time, who, at that time was involved in the purchasing of meat products, as he still is today.

Q Prior to the petition, what was his involvement, Ed Checchia, in the acquisition of meat for Bohack stores?

A He would be in contact with the suppliers, and place the orders, have people working for him. He was in charge of the meat buying area of our office; had a staff with him.

Q What is his relationship to the purchase of meat today?

A To see that Bohack gets the quality and the cost from the wholesalers that's a fair cost and the proper quality, according to Bohack specifications.

Q Does he deal with the suppliers?

A Suppliers direct?

Q Yes.

A No, today we don't, because all we do is we order, we order from Hill's, who is our present meat supplier, and prior to that it was Shopwell and Hill's, or Shopwell, whichever the case may be, places the order with the meat vendors, whatever vendors are involved in the purchase of meat.

Q How many are on Mr. Checchia's staff now?

A Just Mr. Checchia.

Q Who is Harry Fiumaro?

A At that time he was our head grocery buyer.

Q And is Harry Fiumaro on your payroll now?

A He is.

Q What does he do?

A He now is in the same position in groceries as Checchia is in meat; he's the watchdog, quote, unquote, of the suppliers that supply us, the wholesalers, and I have a comparable watchdog in the produce, by the name of Henry Borman, and I have a comparable watchdog, by the name of Peter Cirillo, who watches our dairy from the wholesalers.

Q Where does Harry Fiumaro maintain his office?

A Right here.

Q And Ed Checchia?

A Everybody is here.

Q What about Henry Borman?

A He's here, and at times he is out at the Hill's warehouse checking the quality and the costs.

Q The tractors and trailers that we referred to earlier, after the change in operations, where the produce and dairy warehouses were discontinued at Bohack Square and you entered into this relationship with Shopwell, did

Shopwell utilize the same equipment that the Bohack drivers formerly used?

A Substantially.

Q Was there any difference?

A Whenever there was not enough equipment to lease, refrigerated equipment to lease from Truck Fleets of New York, Shopwell would lease other equipment from his leasing company.

Q Did all of the equipment that was utilized by Shopwell for the delivery of produce, dairy and bakery, did that equipment contain the markings of Bohack?

A It did.

Q Was there an agreement that was entered into with Shopwell and Bohack covering the produce, dairy and bakery supplies to the Bohack stores?

A There was a sales agreement entered into between Bohack, D.I.P. and Shopwell, with the approval of the bankruptcy court.

Q Is a copy of that agreement available?

A It is.

Q In addition to that agreement, were there any other documents between Shopwell and Bohack, concerning the supplying and transportation of produce, dairy and bakery to the Bohack stores?

A No, it was all -- the agreement to supply Bohack was all encompassed in the sales agreement, plus other collateral agreements, that gave Shopwell the collateral in order to induce Shopwell to ship us, since Bohack, being in Chapter 11, having no credit, no working capital, had to induce Shopwell to ship perishable products, otherwise the Bohack stores would have been out of the product and would have ultimately been forced into a Chapter 10 proceedings.

Q Who oversaw the Bohack operations at Shopwell?

A Each of the individuals that I mentioned before, that are the present watchdogs at Hill's, were the comparable watchdogs at Shopwell.

Q What was the relationship between the traffic department at Bohack and the distribution operation from Shopwell?

A Bohack had one of its old traffic men up at Shopwell, as we did have comparable men watching in every area to make sure that the product got out on time.

Q Did Bohack pay these men who they utilized from the Shopwell warehouse to make deliveries to Bohack stores, did Bohack pay those individuals directly, the truck drivers?.

A No; these were Shopwell's union, Shopwell's drivers.

Q Did you receive bills from Shopwell regarding transportation costs from Shopwell's warehouse to the Bohack stores?

A We did.

Q Were those bills separate from other bills that you received from Shopwell regarding the cost of merchandise that was being supplied?

A It was encompassed in the weekly bills from Shopwell.

Q Was the transportation cost separate from the cost for the merchandise?

A I believe it was.

Q Is the formula for the payment of these drivers incorporated within the contract that was entered into between Bohack as a debtor in possession, and Shopwell?

A It is.

Q Is that formula related to the volume, weight, or is it hours engaged by these drivers to make the deliveries?

A It would be time to give you a little background in how the sales agreement was arrived at with Shopwell, if I may?

Q Go ahead.

A Bohack was unable to receive the proper credit and quantity of merchandise in its own warehouse, and was trying to stay alive in Chapter 11. The only place that we had to go at that time was to Shopwell, who had the facilities that could handle the Bohack stores.

Shopwell put up some demands before it would service Bohack, namely it had to be protected by our banks with letters of credit, it needed some additional stores as collateral, and in no way would Shopwell obligate itself to purchase any permanent capital expenditures on behalf of Bohack, because it did not know if Bohack would be in existence, because there was a strong possibility that Bohack could not get the proper merchandising, would go into a Chapter 10 proceeding and be liquidated, and the only basis that Shopwell would do business with Bohack was if, one, we would lease them the Bohack's rolling equipment, because the sum to purchase that equipment on the outside, in our estimation, would be a figure in excess of a half a million dollars. Rather than sell that equipment off, we leased it to Shopwell and made an arrangement with Shopwell to reimburse them, on a dollar for dollar basis, for the transportation, which includes the leasing of the equipment, whatever maintenance Shopwell would do on the equipment, gas, mileage, and the cost of the drivers that were Shopwell's drivers.

There was also an attempt on my part to try to convince the president of Shopwell, Mr. Rosegarten, to allow 807 drivers to pick up at Shopwell, load the trailers and have 807 deliver it to the stores. Mr. Rosegarten strongly refused to have that done, on the contention that he had his own union, he has his own problems and he wasn't going to start with any other union coming into his warehouse complex in Hunts Point, and if Bohack wants product from Shopwell, they would have to do it on Shopwell's terms and conditions and, of course, since Bohack was in 11, we had no bargaining power whatsoever, and we met all the demands of Shopwell.

You can verify this, if you wish, at another deposition later with Mr. Martin Rosegarten, president of Shopwell.

Q My question to you, Mr. Binder, was how was the transportation costs computed? Was the transportation based upon hours, was it based upon weight, or what formulas were being --

A Whatever their cost was, we reimbursed them for their cost.

Q Was that cost a billing to Truck Fleets of New York, Inc., or was the billing to Bohack?

A To Bohack.

Q Who are the officers of Truck Fleets of New York, Inc.?

A Frank DeGregorio is president of Truck Fleets of New York; I am a vice president of Truck Fleets of New York.

Q Where does Truck Fleets of New York maintain its offices?

A Metropolitan Avenue in Brooklyn.

Q Metropolitan Avenue in Brooklyn, is that Bohack Square?

A It is.

Q Are the Truck Fleets of New York offices now in this location?

A It is.

Q So that Truck Fleets of New York, Inc. has maintained also offices at the same location where the corporate offices for the Bohack Corporation has been maintained?

A That's correct.

Q Who is Mr. DeGregorio?

A President of Truck Fleets.

Q Is he an officer of the Bohack Corporation?

A No, he is not.

Q The staff of Truck Fleets of New York, Inc., is that separate and distinct from the employees of the Bohack Corporation, or did the Bohack Corporation employees perform work related to the billing and payments on behalf of Truck Fleets of New York, Inc.?

A Truck Fleets is a separate corporation, they do separate work. They do the work only for Truck Fleets of New York.

Q How many employees are involved in that work?

A Right now, Truck Fleets has two employees.

Q They are?

A A bookkeeper and the president of Truck Fleets and one mechanic, three people.

Q The bookkeeper and the officer, are they at this location?

A They are, Metropolitan Avenue.

Q They are at Metropolitan Avenue in Bohack Square at this time?

A Yes; they have always been there.

Q Does Truck Fleets of New York, Inc. do any other work, other than the work for Bohack, as it existed prior to the petition being filed and now as it exists with deliveries being made from Hill's warehouse?

A Truck Fleets, prior to the filing, did basically the work for Bohack Corporation.

Q And only the work for the Bohack Corporation?

A I'm not sure. There was a point that he did some work, but nothing substantial.

At the present time, Truck Fleets is in a -- call it possibly a state of liquidation. We are having an auction this Wednesday for all the equipment of Bohack, with the exception of that equipment, which is 32 trailers, 32 tractors, which are leased by Truck Fleets at the present time to Hill's.

Q Are those 32 tractors and trailers utilized for the deliveries from Hill's warehouse to the Bohack stores?

A Substantially. Some are spares.

Q Is there equipment, that is currently being utilized by Bozzuto for deliveries to the Bohack stores, that is owned by Truck Fleets of New York?

A No, no, there isn't.

Q Was there a purchase by Bozzuto of Truck Fleets of New York equipment?

A Yes, there was.

Q Was that equipment tractors and trailers?

A Trailers only.

Q Was part of the agreement between Truck Fleets of New York and Bozzuto, with respect to that purchase, that Bozzuto would continue to maintain the Bohack markings on the equipment that was being utilized for deliveries to the Bohack stores?

A No, there was no agreement. Bozzuto just purchased for its own use, the trailers outright, because it was surplus equipment for Bohack, or for Truck Fleets of New York.

Q Did those trailers continue to maintain the Bohack markings that are utilized for deliveries to the Bohack store?

A At the time that we sold them to Bozzuto, they maintained the Bohack markings.

Q To your knowledge, do they continue to maintain those markings?

A No prerequisite. I'm not sure if those Bohack trucks -- I believe those Bohack markings are utilized for Bozzuto I.G.A. stores, as well as delivery to Bohack stores.

Q When the grocery warehouse was closed in mid-January of 1975, were deliveries of groceries to the Bohack stores continued to be performed by the Bohack drivers, under the Local 807 contract?

A I don't remember the exact day when Bohack terminated its relationship with 807 and was having all its deliveries made strictly by grocery wholesalers to the Bohack stores, I don't know.

Q Do you recall that Local 807 drivers, employed by Bohack, were utilized to pick up groceries from Filigree's warehouse, and brought back to the Bohack Square facility?

A I remember that the 807 drivers went to Filigree's warehouse and picked up loaded trailers, that were loaded at Filigree, and delivered them to the Bohack stores, before Filigree went into Chapter 11 itself.

Q Did Filigree pre-select those groceries for the Bohack stores, were they designated stores so that the groceries did not have to be unloaded at the Bohack warehouse before they could be reloaded and delivered to the Bohack stores?

A They did.

Q Was the same true with respect to Bozzuto deliveries of groceries to Bohack Square?

A Bozzuto was in a different time period; there were different situations.

When Bohack had its grocery warehouse open, Bozzuto was basically delivering trailer loads of groceries to Bohack Square. After we closed the grocery warehouse, because it was onerous, because of the economy involved, Bozzuto then loaded the groceries by store, just loaded the groceries by store, and then the groceries were delivered to the Bohack stores by the 807 drivers.

Q Was there not a period that Bohack utilized Local 807 drivers to go to Bozzuto to pick up the groceries that had been pre-selected, and return with those groceries to the Bohack Square terminal for delivery the next day to the Bohack stores?

A Yes, there was a period of time where 807 drivers went up to Bozzuto's warehouse, brought the groceries down to the Bohack Square yard, they stayed overnight, and the 807 drivers the next morning delivered them to the Bohack stores, yes.

Q Did that change?

A Yes, it did.

Q When did that change?

A Sometime after the closing of the grocery warehouse.

Bozzuto, like Shopwell -- let me work back a little.

Our supplier, Filigree Foods, allowed Bohack to come in with their 807 drivers and pick up groceries. When Filigree filed its own Chapter 11 proceedings, Bohack was forced to go and find another wholesale grocer, because Bozzuto was too small and could not handle the extra volume.

We then went to Krasdale Foods in the Hunts Point section of the Bronx, and there, again, as it was in Shopwell, we were not allowed to come in and pick up our own product, pick up grocery product, and the only way that Krasdale would do business with us was if they delivered directly to their stores with their own drivers and their own equipment

Now, at Bozzuto, Bozzuto was having problems with his union, but was still allowing us to go up and pick up grocery loads at Bozzuto's warehouse and deliver them back to Bohack Square

Q My question is, did there come a time when that relationship with Bozzuto, vis a vis the Bohack drivers, changed?

A Yes, there was.

Two things happened: One, foreclosure proceedings were commenced by the Brooklyn Savings Bank against Bohack Square, which is a 35 acre terminal, and we were ordered, basically, to vacate the use of the premises, or to start paying use and occupancy.

It was decided at that point to phase out of Bohack Square completely, since we knew that we were going to lose the property ultimately, under a foreclosure, and move the corporate offices.

We had closed the grocery warehouse, and then we started to look at plans whether it was feasible to keep the meat and deli warehouse open, considering the rent and the other expenses that were necessary to keep it going with Bohack's limited volume.

An additional factor is Bozzuto started to get problems with its union in Connecticut, where we were told they wanted to do all the work and deliver direct to the Bohack stores, and they didn't want any other union doing the work, which was a similar situation we ran into with Shopwell, with their union, and Krasdale and their union, and ultimately Hill's and their union.

All the suppliers had different unions; Krasdale's is different from Shopwell's, Shopwell's is different from Bozzuto's, and Bozzuto's is different from Hill's.

Q When did Bozzuto start making deliveries with its own drivers from Cheshire to Bohack Square?

A I wouldn't know the exact date, but I would guesstimate it to be about the time that we closed the meat and deli warehouse, I would think some place around July of '75, approximately.

Q When did Bozzuto start to make deliveries direct from Cheshire to the Bohack stores?

A I thought I just answered that.

Q No.

A I don't know the exact date, but if I remember, it would be some place around, I think, July, '75.

Q Was it before or after Judge Parente issued his temporary restraint?

A What temporary restraint?

Q Against Local 807.

A I can't get it down to that exact time frame.

Q Was there a period of time before Bozzuto made the deliveries directly to Bohack stores, that the Local 807 drivers were not used to make the trip up to Cheshire to pick up the grocery loads, to return them back to Bohack Square, but were utilized to make the deliveries from Bohack Square to the stores and return back to Bohack Square?

A I don't understand the whole question. Could you give it to me in pieces?

Q Was there a period of time that Bohack drivers were used to make deliveries from Bohack Square to the stores, but the groceries that they were delivering to those stores were brought down from Cheshire, Connecticut to Bohack Square by Bozzuto drivers?

A Yes.

Q When did that take place?

A Again, I don't know the exact time, but there was a period of time where we were trying to pacify Bozzuto's union in Connecticut, and we felt that, instead of having the 807 drivers going up to Connecticut and bringing the boxes down to Bohack Square, that if we gave that work to Bozzuto's union and let them bring the boxes from Bozzuto in Connecticut down to Bohack Square, this way we could still keep a substantial amount of the 807 drivers working, which was always our desire.

Q Let me see if we can summarize the Bozzuto operation.

Prior to the petition being filed, Local 807 drivers were used to go to Bozzuto --

A Excuse me. Off the record.

(An off the record discussion was held.)

Q There was a period of time, regardless of the reason, prior to the petition being filed, that Local 807 drivers, employed by Bohack, were used to go up to Cheshire, Connecticut to pick up groceries and to return with those groceries to the Bohack warehouse?

A Okay.

Q Prior to the petition, those groceries were unloaded into the Bohack warehouse and merged with the other groceries for eventual delivery to the Bohack stores.

A Okay.

Q Then, after the petition was filed, at some point in mid-January of 1975, the relationship between Bozzuto and Bohack changed from what it had been for the period between a few months prior to the petition being filed, up to mid-January of 1975; is that correct?

A Correct.

Q At that point, Local 807 drivers were utilized to pick up groceries from Cheshire, return them to Bohack Square and drop the boxes for the following day, when other Bohack drivers were used to make the deliveries to the Bohack stores is that correct?

A Correct.

Q Then, at some later point, Bozzuto drivers were utilized to bring groceries down to Bohack Square, drop the boxes, and then delivery was made to the Bohack stores by Local 807 drivers; is that correct?

A Yes.

Q And then the next step was that Bozzuto drivers went directly from Cheshire, Connecticut to the Bohack stores and the Local 807 drivers were not utilized at all; is that correct?

A Correct.

Q And the last step in that summary is the current procedure that exists between Bozzuto and Bohack.

A That's correct.

Q Was there an agreement that was entered into between Bohack, as a debtor in possession, and Bozzuto, for the groceries that were received, and any transportation that was involved in the deliveries?

A Bohack pays Bozzuto a cost plus 3.55 per cent to deliver groceries direct to the Bohack stores.

Q When you say cost, what's included in that cost?

A Bozzuto keeps the cash discounts, gives us credits for all advertising allowances and manufacturers' deals.

Q Is there an agreement between Bozzuto and Bohack covering the relationship between Bozzuto and Bohack?

A No written agreements.

Q There never was any written agreement?

A Never was.

Q There was never any written agreement with respect to transportation cost?

A I said there was never any written agreement between Bozzuto and Bohack, Krasdale and Bohack, or Filigree and Bohack, and to this day there is no written agreement on any of our grocery suppliers.

The only written agreement that exists today is one with Hill's Supermarkets on perishables, and the only one that existed before that is the written agreement for perishables with Shopwell.

Q Do you have a copy of the written agreement with Hill's available?

A I do.

Q Will that be provided?

A It will.

Q Do you have it at this time?

A I do.

MR. MANGAN: Could I have it, please, and also the written agreement covering Shopwell.

(Short recess.)

Q Is there also a current written agreement between Truck Fleets of New York, Inc. and Hill's, and was there a written agreement between Truck Fleets of New York and Shopwell?

A Yes, as to both. Yes as to Shopwell, yes as to Hill's, and we have to locate the Hill's agreement.

MR. MANGAN: Mr. Levine, will you provide me with a copy of both of those agreements as soon as you have them available to you?

MR. LEVINE: Yes, I will.

Q I show you this document, which is entitled, "Vehicle Lease and Service Agreement," dated December 16th, 1974, and ask you if this is the lease agreement between Truck Fleets of New York, Inc. and Shopwell, Inc.?

A It is.

MR. MANGAN: Could we have that marked for identification, please, as Defendant's Exhibit A.

(Vehicle Lease and Service Agreement, consisting of six pages, was marked Defendant's Exhibit A for identification.)

Q I show you this document entitled, "Exhibit D, Shopwell, Inc.," with its address, and dated November 11th, 1974, addressed to the Bohack Corporation, and I ask you if that is the agreement between Shopwell and Bohack covering produce and dairy supplied from Shopwell to the Bohack stores?

A It is.

Q Is that the only document that exists between Shopwell and Bohack, as a debtor in possession, covering the supplying and transportation of produce and dairy from Shopwell to the stores?

A Supplying produce and dairy, it's the only document. It was later amended to include meat and delicatessen products.

Q At the time that the meat and deli warehouse was closed and that work was transferred over to Shopwell?

A At the time we closed our meat and deli warehouse, and Shopwell became our meat and deli wholesaler.

Q Do you have available to you the other part of that agreement dealing with the deli and meat?

A We do.

Q Can you supply that to me now?

A Yes.

It will be available to you before you leave.

MR. MANGAN: Would you kindly mark this document as Defendant's Exhibit B for identification.

(Document entitled "Exhibit D, Shopwell, Inc., dated 11-11-74, consisting of 12 pages, was marked Defendant's Exhibit B for identification.)

Q Mr. Binder, I notice from Defendant's Exhibit B for identification, that this is unexecuted.

Would you kindly provide me with a copy of the executed document?

MR. LEVINE: We will so provide you.

MR. MANGAN: And, as well, the copy of the executed document dealing with the amendment when meat was turned over to Shopwell?

MR. LEVINE: Yes.

Q Mr. Binder, I show you a document dated August 27, 1975, to the Bohack Corporation, and ask you whether or not this is the agreement between Bohack, as the debtor in possession, and Hill's Supermarkets, Inc., covering produce, dairy, meat from Hill's to the Bohack stores?

A It's the agreement between Bohack and Hill's, but it covers produce, meat and delicatessen; it does not cover dairy products.

MR. MANGAN: Mark that as Exhibit C, please.

(Agreement between Bohack and Hill's, dated 8-27-75 was marked Defendant's Exhibit C for identification.)

Q You mentioned that foreclosure proceedings were instituted against Bohack with respect to Bohack Square.

Was your statement that you anticipated foreclosure proceedings, or have they been instituted?

A They have been instituted.

Q Does the Bohack Corporation still own Bohack Square?

A The foreclosure proceeding is still proceeding.

Q At the present time, the Bohack Corporation owns Bohack Square?

A It does.

Q Is Bohack Square being utilized at all at this time?

A Not for the delivery of any type of product saleable in the stores.

Q Is it being utilized for any purpose at this time?

A I have my carpenters and refrigeration mechanics use it as a storage facility.

Q Is there security maintenance at Bohack Square?

A By the Brooklyn Savings Bank, the first mortgagee, not by Bohack.

Q How long has that security been maintained there?

A By the Brooklyn Savings Bank?

Q Yes.

A Since the time they started the foreclosure proceedings at the terminal.

Q When was that?

A I don't know the exact date.

Q Approximately?

A You can get that from Shaw and Levine.

MR. LEVINE: June of 1975.

Q And prior to June of '75, security was maintained by Bohack?

A That's correct.

Q You stated that Truck Fleets of New York, Inc. still maintains an office at Bohack Square?

A It does.

Q Do they maintain an office here, as well?

A No, they do not.

Q Is equipment owned by Truck Fleets of New York, Inc. still maintained at Bohack Square?

A The office of Truck Fleets is being maintained at Bohack Square to ready itself for the liquidation sale of all the equipment that is not being used, which sale is taking place this coming Wednesday.

Truck Fleets has dismissed all its mechanics, except one, which maintains the maintenance vehicles of the carpenters and refrigeration mechanics.

Q How many carpenters and refrigeration mechanics are at Bohack Square?

A There are none at Bohack Square; it's just the home base, it's the place they use for their phones.

Bohack is presently exploring other locations to move its refrigeration and maintenance, its carpenters, out of Bohack Square?

Q Do those individuals perform work at the stores?

A Yes; only at the stores.

Q After the liquidation sale takes place next Wednesday, will Truck Fleets of New York move its offices to this location, or will they maintain offices at Bohack Square?

A In all probability, we will have to decide whether to liquidate Truck Fleets or not, but as of next Wednesday, Truck Fleets will no longer be an operating entity.

Q What about the 32 tractors and trailers which are currently leased to Hill's?

A Strictly on a finance lease, and Hill's maintains their own equipment.

Q Who will be the registered owner of the equipment at Hill's? I'm talking about the 32 tractors and trailers.

A The equipment is owned by Truck Fleets of New York, and is leased to Hill's, as is every other finance lease-type agreement.

Q Will there be any change, with respect to the ownership of those vehicles, as a result of this liquidation sale next Wednesday?

A The liquidation sale is that equipment that is idle, that used to be used with Bohack's own warehouses.

The only equipment that will be owned by Truck Fleets, in a legal sense, is that equipment that's leased out on a finance lease basis to Hill's, which Truck Fleets has no obligation to maintain in any form or fashion.

Q With respect to that equipment that I'm talking about, will the relationship continue to be that of Truck Fleets of New York, Inc. as lessor, and Hill's as lessee, after the liquidation sale takes place?

A It will.

Q At the time that the liquidation sale takes place, will Truck Fleets continue to maintain an office at Bohack Square, or will they transfer their operations over to this office, and bill for their services, whatever they may be, out of this office?

A Bill who for what services?

Q Hill's.

A Well, they don't bill Hill's for any services.

Q For the use of the equipment?

A For the leasing of the equipment?

Q Yes.

A Which is one bill, once a month.

We don't know where Truck Fleets legally will be domiciled, but they will only have to make out one bill a month.

Q What is the term of the lease of the 32 tractors and trailers with Hill's?

A The dollar figure that was arrived upon between Truck Fleets and Hill's.

Q The term of the lease?

A I don't know.

MR. LEVINE: I don't recall it, either.

Q During the period between July 30th, 1974, and the termination of the Local 807 drivers, were contributions into the Local 807 labor, management, health and pension fund made on behalf of those drivers?

A They were.

Q Were the wages, set forth in the collective bargaining agreement, paid to those drivers?

A They were.

Q Were all the fringe benefits and other economic costs contained in that collective bargaining agreement provided to the drivers?

A In relationship to the wages and health, welfare and pension, they were.

Q Holidays and vacations?

A Holidays and vacations, yes.

Q And are there still questions between the health and pension fund and the Bohack Corporation regarding certain contributions that have not been paid, but which are being currently negotiated?

A Not to my knowledge.

Q Was there an audit of the Bohack Corporation covering the period after July 30th, 1974, which has been forwarded to the Bohack Corporation, and that amount is currently under discussion?

A I have seen this morning a copy of the audit sent to this office, and it is presently being reviewed by our accountant and personnel department.

Q For what purpose?

A For validity.

Q And if found to be valid?

A I haven't gotten the results back yet.

Q And if found to be valid, what will take place?

A If found to be valid, the monies will be paid over to the appropriate 807 funds.

Q When did the relationship with Shopwell terminate?

A I would say sometime about August or September, 1975.

Q What was the reason for that termination?

A Bohack had a better arrangement for the purchase of perishable products offered to it by Hill's Supermarkets, or Brentwood Wholesale, which is the wholesaling arm of Hill's, which was recently created to go into the wholesale perishable and grocery business for other supermarket operators.

Q When did Brentwood Wholesale come into being?

A I don't know. Recently, though. I don't know.

Q Was Hill's looking for additional capacity?

A Yes, that is the reason they activated Brentwood Wholesale, to pick up other customers, and they now service other independent supermarkets, as well as Bohack.

Q Did they solicit Bohack's business?

A They did.

Q At some point in time, after January of 1975, was there any discussion with Local 807 about possibly transferring the produce and dairy from Shopwell to Hill's, and that the base for the trucking was to be transferred from Bohack Square to Hill's location in Brentwood?

A I had discussions, in trying to get suppliers, either Hill's, Associated Foods, or others, to supply

Bohack with product and also to let Bohack pick up with 807 drivers, I had discussions of that nature with Associated, in the way of dry groceries, and Hill's, sometime in the late summer of 1975, to no avail. They both insisted on maintaining their own unions to do the work.

Q I am asking you whether or not there was ever any discussion between Bohack and Local 807 regarding the Hill's location as being a base for drivers and that, instead of using Bohack Square as the base, to use the Brentwood location as the base,and to continue to maintain the collective bargaining and employment relationship between Local 807 and Bohack?

A At Hill's?

Q At Hill's.

A No, not at Hill's.

Q Now, when Hill's came to you and sought for you to terminate your relationship with Shopwell, were there any negotiations that took place?

A Yes.

Q Did you terminate your relationship with Shopwell?

A Well, they wanted our business, and if they were successful in getting our business, obviously I had to terminate our relationship with Shopwell.

Q Did they also solicit your grocery business?

A Yes, they did.

Q Did they indicate at that time that they would perform or wanted to perform all of the work that Bohack had in supplying its stores, meaning Bohack stores?

A They wanted our business.

Q All of it?

A As much as they could get.

Q They felt that they had the capacity to handle not only the produce business, but produce, dairy, meat, groceries, and anything else that you might need to supply your stores?

A Hill's felt that they had the capacity.

Q Was there a substantial reduction to you by transferring from Shopwell to Hill's in September of 1975?

A There was a reduction; I don't know if it was substantial, but there was a reduction.

Q Do you have documentation, other than what you have currently provided, which would reflect the difference in cost to you by transferring the produce and meat from Shopwell out to Hill's?

A When you examine the Shopwell sales agreement and the Hil [illegible] greement, you will see the difference in pric [illegible]

Q [illegible] re[illegible]ve invoices from Shopwell, in addition to the documents you provided to me? Do you have either daily, weekly or monthly invoices?

A We do.

Q And are those available?

A They are.

Q Would you provide them, please?

A We will.

Q And what are they, on the basis of daily, weekly, or monthly invoices?

A I'm not that familiar with them, but, I assume, there are daily deliveries to the stores and some form of summary where it's paid, where we pay them off, a weekly statement, on pre-arranged terms.

Q There are documents here that are -- I see some for Shopwell and some for Hill's. Are those the invoices?

A Those are the form of invoices, yes.

Q Could I take a look at those, please?

A Yes.

MR. LEVINE: Yes.

MR. MANGAN: At this point, we will just interrupt Mr. Binder's examination and have the accountant come in.

ARTHUR LESHIN, having been first duly sworn by a Notary Public of the State of New York.

was examined and testified as follows:

Q What is your name, please?

A Arthur Leshin.

Q Where do you reside?

A 3 Manitoba Way, Marlboro, New Jersey.

Q Mr. Leshin, are you currently employed?

A Yes.

Q By whom?

A The Bohack Corporation.

Q In what capacity?

A Assistant controller.

Q For how long a period of time have you been so employed?

A Nine months.

Q And prior to that?

A With Kay Corporation.

Q As a controller?

A Assistant to the corporate controller.

Q As part of your duties as assistant controller, do you handle the receipt and posting of invoices, and the payments of those invoices after they have been posted?

A I review the invoices after they are posted.

Q Did you receive invoices from Shopwell for merchandise that was provided by Shopwell to the Bohack stores?

A Yes.

Q Was that a separate invoice from transportation charges for services performed by Shopwell?

A Well, in each week's work, there were a few invoices; invoices for merchandise, invoices for transportation charges, and there was one master invoice which summarized all the charges.

What I was going to say, the invoices were estimated invoices, and at a later date there were adjusted to actual figures.

Q Was the estimated invoice on a daily, weekly or monthly basis?

A Weekly basis.

Q And was the master invoice on a monthly basis?

A No, weekly; everything was weekly.

Q Does Bohack maintain the invoices, both the estimated and master invoices, for the period that Shopwell was making deliveries to the stores?

A For the period that I have been with Bohack, we have maintained invoices, and we should have all the invoices on file right in the office.

MR. MANGAN: Get me an estimated and a master invoice for Shopwell.

(Witness complies.)

Q I show you this document labelled, on Shopwell, Inc. stationery, as "Statement for the week of July 26, 1975."

I ask you if you can identify it?

A Yes.

Q What is it?

A It's the Shopwell estimated master invoice for week ending 7-26-75. It includes actual and estimated billings for a number of weeks, namely three.

MR. MANGAN: I will ask you to mark this as Defendant's Exhibit D for identification.

(Shopwell statement was marked Defendant's Exhibit D for identification.)

Q Mr. Leshin, I show you Defendant's Exhibit D, and ask you whether that includes the drivers' charges estimated for that week?

A Yes, it does.

Q Are there any other charges that are included for transportation?

A You have the estimated drivers' payroll, estimated drug driver's payroll, an adjustment to the prior week's driver's payroll, both drivers' payroll and drug drivers' payroll, estimated tolls, truck expense.

Q What is a drug driver?

A I guess that's to deliver the health and beauty aide orders.

Q When you receive these invoices, and after they are posted, are they posted in another document that deals with just transportation charges?

A Yes.

Q Is that a record that is kept in the regular course of your business?

A Yes, it is.

Q Prior to Shopwell taking care of the delivery, was there a record maintained by Bohack that was comparable to the Shopwell transportation book?

A I believe so, but I can't say, you know.

Q Have you seen such a document or such a book since you have been employed by Bohack?

A Well, we have an account for trucking expense, and our own trucking expense was charged to that account.

Q So that that account would reflect a comparison to Bohack for transportation charges before Shopwell, and transportation charges after Shopwell?

A I'm not sure if we're using the same account as we used for our own drivers, when we had our own drivers. However, we could ascertain the drivers' charge for Bohack as a warehousing operation, and we can ascertain the drivers' charge that we have paid Shopwell.

Q What do you call that record that you do the posting in?

A Our general ledger.

Q And part of the general ledger includes transportation costs?

A Right.

Q Does that general ledger also include the number of drivers that were employed for the period of time that you are posting?

A No; the payroll department would have the number of drivers that were employed, or the traffic department would have the listing of drivers, too.

Q The payroll department for the period when you had your own drivers would know the number of drivers that were employed for the particular period that has been posted; let's say for the month of June?

A Right. For any given week, they can ascertain how many people were on the transportation payroll, and we can get a number for you.

Q Do you know what the document is that is utilized by the payroll department for this purpose?

A I would imagine it's their weekly payroll summary.

MR. LEVINE: Off the record.

(An off the record discussion was held.)

Q So the general ledger would reflect the costs for any given week, and the payroll department would give you the number of drivers that were used during any given week?

A Right.

Q Whether it was during the period that you used your own drivers, or during the period that you used drivers employed by Shopwell or Hill's?

A Well, we would not maintain the payroll records for Hill's or Shopwell drivers.

Q Would you know from any records how many drivers were being utilized by Shopwell or Hill's for any given week?

A Well, I see attached to an invoice here, it's an adjustment for week ending 7-19-75, from Shopwell, and they are listing drivers, they have a listing of all the Bohack drivers, I guess, that were employed by Shopwell to deliver our merchandise.

Q Which sheet is that, sir?

A That's the attachment to the drivers' payroll adjustment, week ending 7-19-75; their invoice number is 616.

MR. MANGAN: Let's have this marked as Defendant's Exhibit E.

(Drivers' payroll adjustment for week ending

7-19-75 was marked Defendant's Exhibit E-1 for identification.)

(Weekly store payroll was marked Defendant's Exhibit E-2 for identification.)

(Weekly charges were marked Defendant's Exhibit E-3 for identification.)

Q Attached to that document is a list of the drivers that were employed during that week, and the total amount paid to those drivers during the course of that week, individually and collectively?

A Right.

Q Listed on Defendant's Exhibit E is an estimated charge of $6,000. Was that charge standard for each week, the sum of $6,000?

A I can't say -- no, it's all different figures.

Q Mr. Leshin, in order to establish the number of drivers employed by Shopwell, for purposes of making deliveries to the Bohack stores, during the period between the time that Shopwell began performing this work, until approximately mid-September of 1975, the best document to use would be the drivers' payroll adjustment for each week during that period, would it not?

A Yes, it would be.

Q That would reflect not only thetotal charges that should be paid by Bohack for that period, but also list the drivers by name and the amount that they earned for that particular week?

A Yes.

MR. MANGAN: Mr. Levine, I'd ask for the production of the drivers' payroll adjustment for each week during the period that Shopwell was performing deliveries on behalf of Bohack.

MR. LEVINE: Okay.

MR. MANGAN: That document has been listed, at least for the week of July 19th, 1975, as Defendant's Exhibit E.

THE WITNESS: However, that does not indicate that there was such an adjustment sheet for each week.

MR. LEVINE: Where they exist, they will be provided.

Q Do they exist for each week?

A I would say yes, they do exist.

I'm looking now at the week ending 8-2-75, and again we have -- I'm sorry, this is the adjustment for the drivers' payroll for week ending 8-2-75, and they show the estimated billing and the actual amount with each driver's name attached, and the total payroll for that week, and added to that would be the fringe benefits for the drivers.

Q Well, before payment was made to Shopwell, did you require that you had a payroll adjustment sheet covering that week, including the driver documentation?

A No. We were paying Shopwell based on an estimated invoice, and in the following week the estimated invoice was adjusted, and the adjustments, either up or down adjustments, were either deducted or added to the following week's estimated invoice.

Q Didn't you get an adjustment sheet for each week?

A Right, but that would have happened in the following week.

Q And the adjustment sheet would be the basis for making the final payment for that preceding week's work?

A Right; that adjustment did reflect the actual driver cost.

Q And you did receive an adjustment sheet for each week?

A I would say yes.

Q And that adjustment sheet would contain the driver records, the number of drivers and the amount that they were paid?

A Yes.

MR. MANGAN: Then I repeat my request for the production of those documents.

MR. LEVINE: Okay.

Q Is there a difference between the Shopwell operation, as you have described it, and the documents reflected, than the Hill's operation?

A Yes. The Hill's operation is billed out on an actual basis, and each week is a week within itself, and there should basically be no adjustments to the invoices.

Q The Hill's invoice, did that also include the names and hours of the drivers and the amount that each was paid, as well as the collective payment due?

A No. They just list the transportation charge, the hours, and they don't substantiate it with a driver listing. They're just listing the day, the hours, and are giving us the total hours.

MR. MANGAN: Would you please mark that as Defendant's Exhibit F for identification?

(Invoice and attached inter-office correspondence was marked Defendant's Exhibit F for identification.)

Q Mr. Leshin, I show you Defendant's Exhibit F for identification, which is two pages, and if I didn't mention it, Defendant's Exhibit E for identification consists of three pages.

In Defendant's Exhibit F, there is a reference to the day of the week, the date, then there is reference to number dispatches, number stores, and total hours expended. Do you know what number of dispatches, number stores and total hours expended, what each of those refer to?

A Number of stores should be the number of stores that were serviced on that particular day.

The total hours expended should be the total drivers' time spent in delivering merchandise, waiting time and unloading time for the trailers delivered to the stores.

Dispatches, I don't know what that indicates.

MR. LEVINE: Off the record.

(An off the record discussion was held.)

A (Continuing) Dispatches, I believe that's the number of trucks that were dispatched from the Brentwood warehouse distribution center.

Q For a given week, does Defendant's Exhibit F reflect the total transportation charges that Hill's is billing to Bohack for that week?

A Yes.

When I say yes, let me stand corrected. There is garage work that is performed on Bohack trailers, and that is billed to us on a separate invoice.

Q Is that done on a weekly basis?

A Yes, it is.

Q Do you have a copy of that available for us?

A Yes, I do.

MR. MANGAN: Would you mark this as Defendant's Exhibit G, please.

(Documents, top one labelled "Invoice," were marked Defendant's Exhibit G for identification.)

Q Mr. Leshin, I show you Defendant's Exhibit G for identification, which includes an invoice sheet and a number of other sheets that are attached to it, and I ask you whether or not the invoice sheet is a summary of all of those attachments?

A Yes, it is.

Q What does that invoice reflect, in Defendant's Exhibit G?

A It reflects the work performed on Bohack trailers for the week ending 11-8-75. It also reflects a credit due to Bohack for taking orders which are submitted to Hill's.

Q What does that mean, your last statement about credits for orders?

A Bohack employees call the various stores to take meat, deli, appetizing and health and beauty aide orders, and to the extent that the Bohack personnel are involved in taking orders and submitting those orders to Hill's, Hill's gives us a credit for their work.

Q I see. So if you take any orders at this office for Hill's, then you get a credit from Hill's for the amount of time and services expended by Bohack employees?

A That is correct.

Q So that, in addition to the maintenance bill, on the maintenance invoice will be reflected the credit for orders taken by Bohack employees?

A Correct.

Q And that's done as a regular practice, it will always appear on the maintenance bill, to the best of your knowledge?

A To the best of my knowledge, yes.

MR. LEVINE: Up to and including December 4th, 1975.

MR. MANGAN: I ask for the production of the maintenance bills for the period that Hill's started to perform this work, up until the present.

MR. LEVINE: Right.

Q Was there a similar invoice for maintenance work on Bohack's equipment that was forwarded to Bohack by Shopwell, Inc., or were there Bohack mechanics that were assigned to Shopwell to perform that work?

MR. LEVINE: I believe there were no invoices from Shopwell with respect to maintenance, but we will double check it.

MR. MANGAN: That Bohack employees were up at Shopwell and performed that work at the Shopwell location.

MR. LEVINE: Yes, that's my understanding, and if there are such invoices, we will provide them.

Q Mr. Leshin, for the period between January 1 of 1974, and the present day, would there be a periodic sheet in the general ledger reflecting the total transportation costs for that period?

A When you go back to January 1st, 1974, I can't speak for anything prior to my joining Bohack, which was March 31st, 1975, so there is a year and three months that you have --

Q All right, since you have joined the Bohack Corporation, does the general ledger reflect a sheet for transportation costs?

A There is an account in the general ledger for all transportation charges.

Q What is the period covered by that sheet?

A The general ledger starts from February 2nd, 1975, through the present date.

Q And is the amount shown by period?

A By month.

MR. MANGAN: Was that standard practice prior to Mr. Leshin coming to Bohack?

MISS ROELOFSEN: I would say so, yes.

Q Are those books available?

A Prior to my joining Bohack?

Q Both prior to and current books, are they available in this office?

A Yes.

MR. MANGAN: Could we have those?

MR. LEVINE: Yes.

Q Could I see them, please?

A You want to see them right now?

Q Yes, so I can take a look at them.

(Short recess.)

A I brought in a copy of the 1974 general ledger, and I also brought in a copy of the 1975 general ledger.

If we take a look at our general ledger for 1975, and we look at the responsibility center, 0301, department 00, account number 6272, that's where we have been charging the expense for Hill's and Shopwell delivery.

Prior to utilizing Hill's and Shopwell for our warehousing function, looking at our 1974 general ledger, we were charging our drivers' payroll into responsibility, 0301, department 00, account number 5060, and all our drivers' payroll was charged into that account.

Q Was there anything else charged into that account, dealing with the 1974 general ledger, other than drivers?

A To the best of my knowledge, no.

Q Would the cost for leasing equipment be included in that general ledger?

A The cost of leasing equipment -- not in that account, but in the general ledger?

Q Well, in that account.

A To the best of my knowledge, no.

Q Would the cost of the warehouse be included in that account?

A To the best of my knowledge, no.

Q Would there be anybody who's here who would know exactly what was incorporated into that account for 1974?

A Yes.

Q Who would that be?

A Mr. Gambeski.

Q Could Mr. Gambeski at least come in for the purpose of indicating exactly what was indicated in that account for 1974?

A Yes.

(Short recess.)

THE WITNESS: After discussion with Mr. Gambeski, in relation to account 5060, in the 1974 general ledger, Mr. Gambeski told me that the only charges to that account were for drivers' wages.

Q When you say wages, would that also incorporate all fringe benefits, including vacations, holidays, health and pension contributions, and any other costs incurred in maintaining your own drivers?

(At this point Mr. Gambeski was sworn.)

ROBERT E. GAMBESKI, having been first duly sworn by a Notary Public of the State of New York, was examined and testified as follows:

EXAMINATION BY MR. MANGAN:

Q What is your name, please?

A Robert E. Gambeski.

Q Where do you reside?

A 47-16 248th Street, Little Neck, New York.

Q Mr. Gambeski, in account number 5060, does that account number reflect the wages paid to drivers?

A Yes.

Q Is there any other account number which would be utilized by Bohack for purposes of drivers' wages?

A No.

Q What would be included in drivers' wages?

A Strictly their wages.

Q Would health and pension contributions be reflected?

A It would be reflected in that responsibility center, but not in that particular account.

Q What account number would include fringe benefits?

A 8541.

Q Would account number 8541 include anything but fringe benefits?

A No.

Q Would all the fringe benefits be included in 8541?

A Well, another area which we call vacation expense, which is 5080, and if you want to consider Workmen's Compensation part of the fringe benefits, that's another account, 5111.

Q So, in order to establish your cost for the drivers, for any given period, you would have to look at account numbers 5060, 5111, 5080, 8541 and the payroll taxes, which is account 5100. What is 5100?

A Payroll taxes.

Q Now, that would give you your total cost for a given period by examining those account numbers in the general ledger; is that correct?

A Right.

Q But it would not give you the cost per driver for any given period? For instance, if you had 150 drivers during the period that you show in the general ledger, for the month of January of 1975, there would be no breakdown as to the cost per hour for each one of those drivers?

A Right. Looking at the ledger you cannot determine that.

Q Is there any record that's maintained by Bohack which would indicate the cost per hour to maintain a driver during a given period?

A Not to my knowledge.

Q The figures in the general ledger for the period after January of 1975, when the transportation work was being performed by other persons, would only indicate a total charge; is that right?

A What do you mean by a total charge, sir?

Q A total charge for those services.

A Being charged by the outside services?

Q Yes.

A Yes.

Q The general ledger would not indicate the number of people who are being utilized to perform those services?

A By the outsider?

Q Yes.

A No, it would not indicate that.

Q Are there any books and records that are maintained by Bohack which will reflect the total number of hours, or the total number of employees that were utilized during a given period?

A What given period?

Q Well, we have talked about the month of January of 1974. Your general ledger will reflect your total costs, but in order to break that total cost down to a cost per hour, you would have to know the number of hours and the number of people?

A Right.

Q That were employed during that period?

A That's right.

Q Are there records that will reflect those figures?

A The payroll records should be available.

Q Is there a particular document, or is it known as the payroll record?

A It's known as the payroll record.

Q Is that kept on an annual basis, or is it kept on a monthly basis, a different record for each month?

A Well, it would be weekly.

Q Is the payroll record for the year 1974-1975 currently available?

A Could be. I would have to search for it, because of this transition we had from Maspeth to here now, I don't know whether it's here or in Maspeth at this time.

MR. MANGAN: Off the record.

(An off the record discussion was held.)

MR. MANGAN: I call for the production of the time sheets for the drivers, and only the drivers, during the period between January 1st, 1974 and July 16th, 1975.

Q Mr. Gambeski, those account numbers that you referred to, are the figures that will be reflected in the general ledger for those account numbers, are they limited to driver figures, or included in those figures would there be maintenance men and others that are used for the trucking equipment?

A Are you talking about payroll and payroll expenses?

Q The general ledger and the account numbers that you referred to.

A I believe that the men that maintain the trucks are not in that account.

Q Could you check on that for me?

A I could check on that.

Q And so advise counsel?

A When we get the payroll records, we can look.

MR. LEVINE: Okay, check it out.

THE WITNESS: ______________________________

MR. MANGAN: Okay, thank you very much, Mr. Gambeski.

oOo

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Subscribed and sworn to before me
this day of 1975.

____

EXAMINATION OF MR. LESHIN (Continuing):

MR. MANGAN: Let's mark this invoice as the next exhibit, please.

(Invoice with attached inter-office correspondence memo was marked Defendant's Exhibit H for identification.)

Q Mr. Leshin, I show you Defendant's Exhibit H, and included on that sheet is a rental for tractors and trailers, a transportation charge, tolls charge, diesel fuel and oil charge, and New York State truck mileage tax. It would appear that the transportation charge has a cost, and that cost is reflected in a dollar amount of $14.25.

Now, do you know what the 824 means, and if what I said about the sum of $14.25, if that is correct?

A The 824 represents the number of hours that were worked by the drivers, and that is attached to the invoice, right on the back, total hours expended, eight hundred twenty-four hours, and the $14.25 represents the hourly rate.

Q The cost per hour to the employer?

A To Bohack.

Q What do you call this invoice, Defendant's Exhibit H? Would that be a master invoice?

A No, it would not. This would be support for the master invoice.

MR. LEVINE: Would that be the same as F?

Q Exhibit F and Exhibit H, are they the same, except for different weeks?

A Yes.

Q So when I asked for the production of support invoices for the period that Hill's has been performing work for Bohack, I will be getting both F and H, as well as others?

A Yes.

MR. LEVINE: Right.

MR. MANGAN: Thank you very much, Mr. Leshin.

oOo

____

Subscribed and sworn to before me
this day of 1975.

____

JOSEPH BINDER, having previously been duly sworn, resumed the stand and testified as follows:

EXAMINATION BY MR. MANGAN(Continuing):

Q Mr. Binder, I show you Defendant's Exhibit F for identification, and you will notice that there is a tractor and trailer rental charge, plus a charge for the number of hours that drivers were used to deliver from Hill's to Bohack stores, at a rate of $14.29 for those services.

Now, why would Hill's be charging you for tractor and trailer rental if you are the lessor of that equipment?

A Well, if the tractor and trailer rental is the equipment that Hill's rents or leases from Truck Fleets of New York, Bohack Corporation, as far as Hill's and we are concerned, has nothing to do with Truck Fleets of New York; it's a separate business.

Q I see. Okay.

Now, would Truck Fleets of New York be charging Hill's the sum of $5,317.12 for that invoiced period reflecte in Defendant's Exhibit F?

A I wouldn't know.

Q Well, do you have th invoices that Truck Fleets sent out to Hill's for each period, at this office?

A No, I don't.

Q Would that information be available to you?

A We would have to contact Truck Fleets.

Q You are Truck Fleets.

A No, I am basically Bohack, and I am an officer of Truck Fleets, but I don't run Truck Fleets; I'm an officer of the corporation.

Q Can you provide me with the amount that Truck Fleets is charging Hill's for the rental of that equipment for the period between September '75 to date?

A I can supply you with the president of Truck Fleets, who can probably give you that information, or the bookkeeper of Truck Fleets.

Q Mr. DeGregorio will be present the next time we meet, if we don't finish today, or is he here?

A No, he is not here; he is at Truck Fleets in Brooklyn.

Q Will you produce him by request?

A I will.

Q All right, produce him.

A Or, if you wish, I can get you, rather than waste his time -- not waste his time, but use up his time, we can have him provide you with the invoices that Truck Fleets bills Hill's, I guess.

MR. MANGAN: All right. Will you supply those invoices; is that agreeable?

MR. LEVINE: Yes.

Q During the period that Shopwell was performing your work, did Shopwell maintain that equipment, or did Bohack employees maintain the equipment?

A Not Bohack employees, had nothing to do with Shopwell. Truck Fleets may have had a man on the premises, but I don't know if it was for maintenance of the equipment or not, I'd have to find that out. I think Shopwell maintained their own equipment, but, then again, I'm not sure.

Q I am not talking about their equipment, I am talking about the Truck Fleet equipment.

A I'm saying their equipment, whether they lease it from Truck Fleets or anyone else, it's Shopwell's equipment. I believe they may have maintained it themselves, but I'm not sure.

Q Who would be familiar with that and be able to answer it?

A I guess Mr. DeGregorio.

Q I will make it a point, if you will provide Mr. DeGregorio, I would like to examine him on that.

A Sure.

Q Prior to Bohack's going into Chapter 11, how many stores did you have?

A When?

Q Well, immediately prior, July 1st, 1974.

A I can't do it by specific date, but prior to going in, a few months or so prior, approximately 140.

Q And how many stores do you have now?

A Seventy-two.

Q Is it reasonable to state that the number of people necessary to drive the trucks that deliver produce, groceries and meat to the Bohack stores, has been substantially reduced; the need for the number of drivers has been substantially reduced during the period between July of 1974 and today's date?

A The operations are not comparable. We used to run our own warehousing and trucking.

Q Just talking about the number of drivers.

A Dairy, for example, comes from a different wholesaler altogether.

Q I didn't ask you that. I am just talking about the meat, produce and groceries.

A We have half the amount of stores, and less than half the volume; it's a safe assumption that you would have less than half the business.

Q When you signed your agreement with Hill's, was it with Brentwood Wholesalers, or was it with Hill's?

A It was with Hill's.

Q And Brentwood Wholesalers, what was their relationship to Hill's?

A It's a wholesale arm; it's the wholesale business of Hill's.

Q There has been testimony about beauty aide orders. Was Shopwell supplying beauty aides?

A Yes; health and beauty aides.

Q And is that currently being supplied by Hill's?

A Yes.

Q Was that formerly warehoused at Bohack Square and trucked by Local 807 drivers?

A No, it was not; it was done by outside health and beauty aides distributors. For example, one was S.P. Drugs. The other names escape me, but it was never warehoused in Bohack's warehouses or delivered --

Q Are there other items that were never trucked by the Local 807 people, but went to the Bohack stores, that are now being trucked by persons employed by Hill's or Shopwell when they had the business?

A I think it was basically just the health and beauty aides.

MR. MANGAN: I have no further questions.

MR. LEVINE: I have no questions.

(Whereupon this examination was concluded.)

oOo

Subscribed and sworn to before me

this day of 1975.

CERTIFICATE

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

I, ESTELLE REHFIELD, a Notary Public within and for the State of New York, do hereby certify:

That JOSEPH BINDER, ARTHUR LESHIN and ROBERT E. GAMBESKI, the witnesses whose depositions, held on December 12, 1975, as hereinbefore set forth, were duly sworn by me and that this transcript of such depositions is a true record of the testimony given by such witnesses.

I further certify that I am not related to any of the parties to this action by blood or marriage; and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 22 day of December, 1975.

Estelle Rehfield
Estelle Rehfield

U.S. DISTRICT COURT
EASTERN DISTRICT OF NEW YORK - BANKRUPTCY PART

---x

THE BOHACK CORP., Debtor in Possession, :

Plaintiff, :

-against- :

TRUCK DRIVERS LOCAL UNION NO. 807, :
International Brotherhood of Teamsters,
Chauffeurs, Warehousemen and Helpers of :
America,

Defendant. :

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249-26 Northern Boulevard
Little Neck, New York

February 9, 1976
3:15 o'clock p.m.

Examination before trial of FRANK DeGREGORIO,

taken by the Defendant pursuant to Notice.

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D A-d EXAmined
5-18-76

Appearances:

SHAW & LEVINE, ESQS.,
Attorneys for the Plaintiff
770 Lexington Avenue
New York, N.Y. 10021
BY: JESSE I. LEVINE, ESQ., of Counsel.

J. WARREN MANGAN, ESQ.,
Attorney for the Defendant
32-43 49th Street,
Long Island City, New York 11103

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IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for the respective parties herein that the sealing, filing and certification of the within deposition be waived; that such deposition may be signed and sworn to before any officer authorized to administer an oath, with the same force and effect as if signed and sworn to before a Judge of this Court.

IT IS FURTHER STIPULATED AND AGREED that all objections, except as to form, are reserved to the time of the trial.

IT IS FURTHER STIPULATED AND AGREED that counsel for the Defendant shall furnish a copy of the within deposition to counsel for said witness, without charge.

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FRANK DE GREGORIO, having been duly sworn by a Notary Public of the State of New York, was examined and testified as follows:

EXAMINATION BY

MR. MANGAN:

Q What is your name, please?

A Frank DeGregorio.

Q Where do you reside?

A 2573 Hollers Avenue, Bronx, New York.

Q Mr. DeGregorio, are you currently employed?

A Yes.

Q By whom?

A Truck Fleets of New York.

Q In what capacity?

A President.

Q Who are the other officers?

A Joseph Binder, Morty Frankfort, and Bob Gambeski and Josephine Robinson.

Q You are the president?

A Yes.

Q And what are the titles for Mr. Binder, Mr. Frankfort and Mr. Gambeski?

A They're vice presidents.

Q Wasn't there a female that you mentioned?

A Josephine Robinson, Secretary.

Q Where do you maintain your offices?

A 4681 Metropolitan Avenue, Brooklyn.

Q Are your offices currently there?

A Yes.

Q What is the work of Truck Fleets of New York, Inc., what type of business are you involved in?

A The trucking affiliate of the Bohack Corporation.

Q Has that always been the business of Truck Fleets of New York, Inc.?

A Yes.

Q Are you limited to trucking for Bohack?

MR. LEVINE: Object to the form of that question.

Q Is Bohack the only person you do business for?

A Yes.

Q How long has Truck Fleets of New York, Inc., been a functioning corporation?

A Well, I'm there since June of '66.

I would say about January, '66 or December, '65.

Q Who owns Truck Fleets of New York, Inc.?

A At the present time, the Bohack Corporation.

Q When did the Bohack Corporation acquire Truck Fleets?

A January, '73, I believe. I'm not definite on that.

Q Prior to that, who owned it?

A Leaseway Transportation -- Leaseway Corporation, Leaseway Transportation.

Q Were the officers that you referred to the same prior to January, '73 as they are now?

A No, I don't believe so. There were some changes made. There were vice presidential changes made.

Q Was Bohack the only source of business for Truck Fleets of New York, Inc. prior to January of 1973?

A Yes.

Q What was the relationship of Truck Fleets to Bohack prior to January of 1973?

A They did the trucking for Bohack Corporation.

Q Did you supply equipment, or did you also supply manpower together with that equipment?

A For maintenance; we supplied the manpower for the maintenance, the equipment and manpower for maintenance.

Q Where was that maintenance performed?

A 4681 Metropolitan Avenue.

Q Where was the equipment stored?

A There.

Q Does that continue to be the relationship between Bohack and Truck Fleets of New York, Inc.?

A Yes.

Q Are you currently leasing equipment to Bohack?

A We're leasing it to Hills Supermarket now.

Q How long have you been leasing it to Hills?

A When Hills did the warehousing for Bohack, we started. Now, I'm not sure of the dates, I don't know exactly.

Q Prior to the relationship between Hills and Bohack --

A Then we leased them to Shopwell.

Q Prior to Shopwell, who did you lease the equipment to?

A Bohack.

Q Do you recall the number of pieces of equipment that you leased to Shopwell?

A To the best of my knowledge, about 32 tractors and about 44 trailers; it's close, around them figures. That's the Shopwell.

Q Before there was any lease arrangement between Truck Fleets and Shopwell, how many pieces of equipment did Truck Fleets own?

A Before Shopwell?

Q Yes.

A All told, we owned -- we're only talking about delivery equipment, not maintenance?

Q Talking about delivery equipment.

A Delivery equipment to the stores?

Q Yes.

A We owned roughly about 85 powered units and 150 trailers.

Q The powered units, how were they broken down?

A Tractors.

Q All 85 would be considered tractors?

A Yes.

Q What did you do with the remaining tractors that you were not leasing to Shopwell?

A They stayed in the yard.

Q Were they utilized by Bohack?

A No. The only way they were utilized, if we needed them for spares and so forth. If one broke down at Shopwell, we would change it over, that's all.

Q Does Truck Fleets of New York, Inc. continue to own 85 tractors and 150 trailers?

A No, sir.

Q How many pieces of equipment does Truck Fleets currently own?

A Right now, we own 33 tractors.

Q And trailers?

A We own about seventy something. Forty some odd are idle in our terminal.

Q You own how many, seventy-four?

A Something like that, yes.

Q And forty are idle?

A Yes.

Q And those forty are located where?

A In my terminal, 4681 Metropolitan Avenue.

Q And the 33 tractors?

A Are at Hills. 32 at Hills, one is at my terminal as a spare.

Q What was done by Truck Fleets with the difference between the 74 tractors, that you now have, and the 150 that you had prior to this relationship with Shopwell?

A You mean the trailers?

Q Trailers, I mean, yes.

A We sold tractors and trailers in the interim.

Q Were any of those tractors and trailers utilized for the pick up and delivery of groceries from Bozzuto?

A I'm sorry. We leased 41 trailers to Bozzuto, and we had about 12 tractors on lease to them for only about two weeks; they went back to us. We had 41, I think, trailers leased to them.

Q Are they still leased?

A No; they bought them outright.

Q When did they buy them?

A Just about, it was finalized about six weeks ago.

Q Did you enter into a leasing agreement with Hills?

A Yes, sir.

Q Do you have a copy of that agreement?

A Yes, there is one. Not with me, but there is a copy.

MR. MANGAN: There is none here in the office?

MR. LEVINE: I don't know if they're presently available. Let me see.

Q Mr. DeGregorio, you mention that Joseph Binder, Mr. Frankfort, Mr. Gambeski and Mrs. Robinson are also officers of Truck Fleets.

Is Mr. Binder an officer of the Bohack Corporation?

A I believe so, I'm really not sure. I believe so.

Q Is Mr. Frankfort an officer of the Bohack Corporation?

A I believe so.

Q Mr. Gambeski?

A No. I think he's just controller.

Q And Mrs. Robinson?

A Yes, I believe so; she's secretary.

Q Can you tell me what the relationship of Mrs. Robinson is to the Bohack Corporation?

MR. LEVINE: Assistant Secretary.

MR. MANGAN: And Mr. Gambeski?

MR. LEVINE: He's an employee of Bohack.

MR. MANGAN: And Mr. Frankfort?

MR. LEVINE: He is a vice president of Bohack.

MR. MANGAN: And Mr. Binder is the Executive Vice President of Bohack?

MR. LEVINE: Correct.

Q Does Truck Fleets own any space at 4825 Metropolitan Avenue?

A No.

Q They lease space there from the Bohack Corporation?

A No, not really. To my knowledge, there might be, but we don't pay rent if that's what you mean.

Q And the telephone and stationery and all expenses, that you pay for?

A That's ours.

Q You pay for stationery?

A Yes.

Q What about telephone?

A Pay for.

Q Do you have the same telephone number as the Bohack Corporation?

A No.

Q Did you at any time have the same telephone number as the Bohack Corporation?

A Yes, we did for about, I guess, six or eight months; we cut off ours and we were hooked up to the Bohack Corporation before they moved here.

Q So, six or eight months before the Bohack Corporation moved out of Metropolitan Avenue, you had the same number as the Bohack Corporation?

A Yes.

Q And your telephone was not billed to you, but billed to the Bohack Corporation during that period of time?

A Yes.

Q Are there any mechanics still on the Truck Fleets payroll?

A One.

Q Does that mechanic perform work other than on Bohack equipment, or on Truck Fleets equipment?

A No. Very rarely, if Hills or somebody calls up, you know, if he's broke down right around the corner, we send him out if he can just get him started, but in general, no, just for Bohack equipment.

Q Where does he make his permanent space?

A 4681 Metropolitan Avenue.

Q Do you perform services for the Bohack Corporation?

A Me, myself?

Q Yes.

A What do you mean?

Q Do you do anything other than serve as an officer of Truck Fleets?

A I take care of the cars, as far as the supervising and so forth, the company controls; I sort of control them.

Q How many company cars are there?

A Approximately 40.

Q Those are all Bohack cars?

A Yes.

Q Are they owned by Bohack?

A Yes.

Q Do you perform any other services for the Bohack Corporation?

A No, not except pertaining to tractors and trailers at Hills, I oversee the maintenance for that.

Q You don't receive any payment from Bohack directly?

A No.

Q What is the nature of your duties during the course of any given week?

A Now?

Q Yes.

A Overseeing the equipment at Hills, you know, the maintenance equipment at Hills, working with Hills people on maintaining our equipment out there.

Q Where do you do that?

A In my office and out at Hills.

Q You do have occasion, then, to go to the Hills facility?

A Yes.

Q How often do you go there?

A Depends. Sometimes once a week, sometimes once every other week.

Q When you're there, what do you do?

A I go over the different invoices with the shop manager there, the equipment superintendent out there.

Q Do you recommend what work should be done on the equipment?

A Yes, sometimes; depending. If there's major jobs, you know, he consults me on them.

Q If he believes that there is work that should be done, he will consult you, if it's major, before that work is done?

A Yes.

Q If work is performed, it's not necessary for him to contact you before that work is performed, unless it's major?

A Yes.

Q Is it also true that you have occasion to go out there yourself to see whether or not the equipment is being maintained in the standard that you approve of, and if you find that something has to be done, or you want it done, will you then discuss it with this maintenance foreman?

A Well, I do discuss it with them, but not necessarily do I have to go out there to see if the equipment is maintained. I keep records. I get the invoices from Hills and I keep the records myself, and I check it that way, but I go out there occasionally to go over different things with them.

Q Don't you also want to be sure that the work you are paying for is being actually performed?

MR. LEVINE: Object to the form of that question.

Q Who pays for the maintenance of the equipment?

A That's done out at Hills?

Q Yes.

A Bohack.

Q Is there any billing back to Truck Fleets for maintenance work performed on the Truck Fleets equipment?

A No.

Q What is the current charge to Hills for the leasing of the Truck Fleets equipment to them?

A The total for the 32 tractors and trailers is about $5,300 a week.

Q How is that computed?

A I'd have to get an invoice from Gambeski.

It's approximately $110 a week for a tractor, and $50 for a trailer. I can get you the figures.

Q Well, would you get them for me, please?

A Thirty-two tractors at a hundred dollars per week, and 32 trailers at $55 each per week.

Q Are there any other employees of Truck Fleets at Metropolitan Avenue?

A Yes; I have one bookkeeper.

Q Is she on full-time payroll of Truck Fleets?

A It's a male. Yes.

Q And in addition to doing the bookkeeping, regarding the relationship between Truck Fleets and Hills, does he perform any other services?

A Yes; he takes care of all the invoices and the depreciation schedules for the equipment that we have now.

Q Are all the tractors of the same make?

A That we have now?

Q Yes.

A Yes.

Q What are they?

A White's.

Q What years?

A From 1969 to '74's.

Q Are they all fully depreciated at this time?

A No.

Q Are any of them depreciated?

A I think ten '69's are depreciated, to the best of my knowledge.

Q Ten White tractors that were purchased, or have a 1969 manufacturing date, they are depreciated?

A Right.

Q And of the remaining 22, what years are they made?

A About seven are 1970's, seven are 1972's, four are 1973's and four are 1974's.

Q What schedule do you use for depreciation, how many years?

A On the tractors?

Q Yes.

A Five years and a balloon payment.

Q Did you personally negotiate the contract with Hills for the leasing of the equipment?

A When you say personally, I got the figures going, yes, but I didn't negotiate it as far as with Hills and the contract.

Q What figures did you use for the purpose of negotiating the agreement?

A Depreciation figures, you know, how much it would take me to pay.

Q Do you have a depreciation schedule?

A Yes.

Q Is that available here?

A Not here; I have it at Metropolitan Avenue.

Q So none of the figures that were used for the purpose of negotiating this agreement with Hills are available to you now?

A No. You mean that I made up to get these numbers?

Q Yes.

A No; they're in my office, the depreciation schedules.

MR. LEVINE: We will provide them to you.

Q What cost factors were included in that schedule?

A You mean how I figured out the things, the depreciation? Some insurance and salaries?

Q Salaries of yourself, your bookkeeper and the --

A Yes.

Q -- and the mechanic, would he be included, or would he be excluded?

A I'm sure I included him.

Q Anything else?

A No, that's about it.

Q When you figured out these costs for depreciation and insurance, did you compute them breaking it down to an hourly cost, or, if not an hourly, what basis?

A Actually, what we really did compute it, so we can sort of break out even week by week and month by month with what the equipment depreciation, salaries, and so forth, so that's the only figures we really used, so we could survive.

Q Do you recall what your insurance factor was?

A No.

Q Are all of these figures included on one schedule?

A These figures?

Q Yes.

A No.

Q On how many different schedules would they be?

A I don't believe these figures, this $155 is included in any schedule. These are just figures I come up with when I figured all these numbers together, what we needed a month to survive, and I just got the numbers altogether and used them, because I'm not paying insurance just for trucks alone, you know, the insurance is a whole package with Bohack.

Q What insurance are you paying other than for the trucks?

A We're not paying any insurance. The insurance is paid by Bohack.

Q Then those figures wouldn't be available to you at Metropolitan Avenue, at any rate?

A No; the only figure I can give you is the depreciation figures.

Q What about the salaries?

A Yes, of course, I can give you that; they're at Metropolitan Avenue.

Q Are there any interest payments that are included in your costs for this equipment?

A Yes, sir.

Q Is the name Truck Fleets listed as the mortgagor of the equipment?

A Yes, sir.

Q Anybody else on the notes?

A No.

Q Bohack didn't sign the notes?

A The notes itself, no. Bohack was a guaranteeor of some of them.

Q After the sale of the equipment, what happened with the revenue that was received as a result of that sale?

A In the most part, we just kept it in Truck Fleets account, and then we credited Bohack against monies owed us, you know, sent them a credit, an invoice credit.

MR. MANGAN: Off the record.

(An off the record discussion was held.)

Q What money was it that will develop that Bohack owes to you that you are crediting their account for?

A Miscellaneous expenditures such as gas for their maintenance trucks, repairs for the maintenance equipment, repairs to some passenger cars that we paid for, I sent to different places to get repaired and they were billed to us.

Q The maintenance trucks that you are talking about, what type of equipment are they?

A Little Dodge vans, and so forth.

MR. LEVINE: Maintenance for the stores.

Q What work do they generally perform?

A Store maintenance: carpenter work, refrigeration work in the store. Also, we bill Bohack for depreciation on the notes for the equipment. Now we're billing them on the maintenance equipment stuff. Equipment that's used at Hills, we're not billing for. Some of that maintenance equipment that's depreciated.

Q So the only thing that's incorporated into the billing to Hills, as far as Truck Fleets is concerned, is the depreciation figures and the salaries?

A Yes.

Q And insurance, is that incorporated within the bill to Hills, or not incorporated?

MR. LEVINE: Object to the form of the question, because I believe he testified before that interest payments were also included in there.

MR. MANGAN: He also said that Truck Fleets isn't paying that insurance.

MR. LEVINE: Interest payments, not insurance.

MR. MANGAN: Did I say interest?

MR. LEVINE: No. He said interest payments were made.

MR. MANGAN: Interest payments were included. Excuse me.

MR. LEVINE: Yes.

Q And the insurance payments, you referred to insurance as one of three factors that were considered.

On reflection, was insurance included within the calculating of your billing to Hills, or was that excluded?

A You know, I really couldn't tell you for sure, I honestly couldn't tell you for sure. I think I said before that it was.

MR. LEVINE: We're not paying the insurance.

Q Can you call your bookkeeper and find out?

A He wouldn't know. I would have to go at the figures, the depreciation schedule and the salary, and so forth, and see what the figures come to. Actually, all I was looking for was a breakeven figure to keep us going with the Hills equipment.

Q Is there any profit built into your billing to Hills?

A No.

Q Is there any administration cost built in?

A Yes; the administration costs are the salaries, but no overhead, and it's possible the insurance might not be included in there, I couldn't tell you for sure. It's just a figure enough for us to keep going.

Q The Federal Highway Use Tax, who pays that?

A Hills does, and bills Bohack back.

Q The New York State License Fee?

A We buy the license, Truck Fleets gets the licenses. I get all the licenses.

Q Are there any other licenses, other than the New York License Fee, paid by Truck Fleets?

A No.

Q Are there any other taxes that are paid by Hills, other than the Federal Highway Use Tax?

A No, not to my knowledge.

Q Are there any New York States taxes paid by Hills?

A Besides the Ton Mile Tax?

Q The Ton Mile Tax is paid by Hills?

A Yes.

Q And then billed back to Bohack?

A Yes.

Q What is that Ton Mile Tax, what rate is that?

A I really don't know, I really don't know. This was always computed by Bohack. We used to just send in the mileages every week or month, and then they would compute it and pay the tax. We never paid it; Bohack always paid it.

Q When you computed the figure for the purpose of depreciation on the equipment, did you estimate, and was that estimate agreed upon with Hills, as to the number of hours per week, or the number of miles per year that the tractors and trailers would be used by Hills?

A No.

Q You didn't use any of these factors in trying to compute what you would charge Hills?

A No.

Q It was simply a matter of computing your own costs for a year, and then billing Hills at one-fifty-second of those costs each week?

A Or per month, right.

Q And Hills will bill Bohack for all maintenance costs?

A Yes.

Q Are you the only one that can tell the maintenance foremen at Hills what work to do on the equipment?

A Yes, except they use their own discretion. We don't tie up the equipment if something that's not a major repair, you know, if it's a minor repair, they do it, they take care of it themselves.

Q Do they put the fuel and oil into the tractors?

A Yes.

Q And they supply the tires?

A No.

Q Who supplies those?

A We get the tires. We had tires in our inventory that I sent out to them, and that's all they've been using so far.

On the recapping, the people that did my recapping before, go out to them, pick the tires up and recap them and bring it back to them, and they bill Truck Fleets.

Q And then you bill Bohack?

A No.

Q So you have built into your costs some of the recapping of tires?

A Yes.

Q Would there be anything else that would be built into your costs, other than the recapping of tires and depreciation and interest and salaries that you referred to?

A No, that's about it.

Q You don't have any dealings with the insurance costs on that equipment, because that's paid for by

Bohack?

A Yes.

Q Prior to Bohack becoming involved with Shopwell or with Hills, what was the relationship between Truck Fleets and Bohack, in terms of billing practices?

A Cost plus.

Q What was the plus factor?

A Seven per cent.

Q At that time did Truck Fleets pay the Highway Use Tax?

A Yes.

Q Did you pay the New York State License Fee?

A We paid them, Truck Fleets did.

Didn't you say before Truck Fleets paid the Highway Use Tax?

Q Yes.

A No; Bohack paid the Highway Use Tax always.

Q But Truck Fleets perfrmed all the maintenance?

A Yes.

Q Pumped in all the fuel?

A Yes.

Q Oil and tires, changed all the tires?

A Yes.

Q At that time, did you have your own insurance?

A No. We stopped the insurance when Bohack took over Truck Fleets of New York.

Q In 1973?

A Yes.

Q So when Leaseway had it, the equipment was insured by Leaseway or whoever owned Leaseway.

A Yes.

Q And after Bohack took over Truck Fleets --

A Now, when Leaseway owned it, we had a collision insurance. To my knowledge, we've always had the comprehensive insurance, Bohack, Bohack always carried the comprehensive insurance, but what Leaseway did was have a collision policy, five hundred deductible collision policy; that was it.

Q So the only change then, in 1973, was the collision policy?

A Yes. We dropped it.

Q Are there any reefer vans that you have out at Hills?

A Yes, sir; they're all reefers.

Q They're all reefers?

A Yes.

Q Truck Fleets doesn't have any dry vans any longer?

A We have five; they're idle in our terminal.

Q Since you started leasing equipment to Hills, has there been any change in the rate?

A I believe there was one increase from ninety to a hundred, and fifty to fifty-five on the trailer, I believe.

Q And you participated in the negotiations for that increase?

A Actually, it wasn't negotiations; I just increased it, told them I was going to do it.

Q There is a written agreement, though, between Truck Fleets and Hills?

A On the original leasing?

Q Yes.

A Yes, as far as I know, there is. I wasn't involved in that.

Q What were the factors used to increase from ninety to a hundred?

A Same as making the original cost, same as the original price.

Q And you simply called Hills and told them that the rate is going from ninety to a hundred?

A Yes.

Q Was there any discussion with Bohack before you called Hills and told them it was going up that percentage?

A Probably not.

Q Have you had an opportunity to review the maintenance charges of Hills and compare them to the maintenance charges when you used to maintain the Bohack equipment yourself?

A I review all the maintenance charges from Hills. Now, when you say compare them, it's difficult to do.

Q Has there been a noticeable increase in the amount of maintenance work being performed now, as compared to what it was before?

A No. But, you know, it's not comparing apples to apples. We never had 32 units to compare to, and when we billed it out, it was at a different labor rate because, when we billed it out, we didn't include all the benefits, you know, the mechanic's benefit, and the normal billing rate, whereas Hills has got a -- I don't know what figure they use -- I think $17 an hour.

Q Incorporated in the contract, is there a breakdown of what the charges will be for the performance of particular work, or simply a matter of the number of hours that are required to perform a job, they will bill Bohack accordingly?

A Yes, as far as to my knowledge, yes.

Q Those bills, though, for maintenance work performed, they are forwarded to you, or do you come here to see them, or do you go out to Hills to see them?

A Usually I either pick them up here, or they're forwarded to me and I've got to sign them, but I keep a copy.

Q And you have to approve all of the charges that are made?

A Yes.

Q Is that true of anything else other than the performance of maintenance? Do you have to approve other bills that come to Bohack from Hills?

A No. I sign a bill -- well, it's all part of one bill that Ron Leonard signs with the drivers and everything on there, but it's got the Ton Mile Tax, yes, I approve the Ton Mile Tax with the mileages and so forth, but I think that's all one bill, included with the maintenance; it's a total package.

Q The New York State Truck Mileage Tax, is that the Ton Tax?

A Yes.

Q Is Ron Leonard consulted about any of the maintenance work that's performed at Hills?

A No.

MR. MANGAN: I have no further questions.

MR. LEVINE: Thank you.

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Subscribed and sworn to before me,

this day of 1976.

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CERTIFICATE

STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

I, ESTELLE REHFIELD, a Notary Public within and for the State of New York, do hereby certify:

That Frank DeGregorio, the witness whose examination before trial was held on February 9, 1976, as herein set forth, was duly sworn by me and that this transcript of such examination before trial is a true record of the testimony given by such witness.

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 20th day of February 1976.

Estelle Rehfield
ESTELLE REHFIELD

Plaintiff's Exhibit 4A—Projected Savings

(Delivery of Groceries)

PROJECTED SAVINGS FROM TOTAL DISAVOWAL OF LOCAL 807 CONTRACT-DELIVERY OF GROCERIES

Bohack drivers pickup from Bozzuto (per load)	
Salary and benefits	$ 90.00
Tolls	12.00
Equipment cost	55.00
Total cost per load	$157.00
Bohack drivers delivery to Bohack stores	
Salary and benefits	$ 70.00
Equipment cost	40.00
Total cost per load	$110.00
Total cost per load of pickup and delivery from Bozzuto to Bohack stores, using Bohack drivers	$267.00
Maximum estimated cost of direct delivery to Bohack stores by Bozzuto drivers (1-1/2% upcharge on average load)	$180.00

RECAPITULATION

Cost of pickup and delivery using Bohack driver (per load)	$267.00
Maximum estimated cost of Bozzuto delivery (per load)	$180.00
Minimum anticipated saving per load	$ 87.00
Average weekly delivery - 100 loads per week	
Average weekly savings by disavowal of contract (grocery deliveries)	$ 8,700.00
Average annual savings by disavowal	$452,400.00

Plaintiff's Exhibit 4B—Projected Savings

(Meat, Delicatessen & Produce Drivers' Costs)

PROJECTED SAVINGS FROM DISAVOWAL OF LOCAL 807 CONTRACT-MEAT, DELICATESSEN & PRODUCE DRIVERS' COSTS

Present drivers' cost of meat and delicatessen deliveries by Bohack drivers (60 loads per week)	
Salary, fringe benefits	$ 5,700.00
Cost per load	95.00
Present drivers' cost of produce deliveries by Shopwell (85 loads per week)	
Salary, fringe benefits	$ 5,865.00
Cost per load	69.00
Present drivers' cost of meat, delicatessen and produce (145 loads per week)	$11,565.00
Present cost per load	$ 79.75
Proposed drivers' cost of meat, delicatessen and produce deliveries by Shopwell (130 loads per week)	
Salary, fringe benefits	$ 9,100.00
Cost per load	69.00

RECAPITULATION

Present drivers' cost of meat, delicatessen and produce deliveries	$11,565.00
Proposed drivers' cost all deliveries by Shopwell	$ 9,100.00
Proposed weekly savings on driver cost	$ 2,465.00
Proposed annual savings, drivers' costs	$128,100.00

Plaintiff's Exhibit 4C—Projected Savings

(Equipment Costs, Warehouse Costs and Recapitulation)

EQUIPMENT COSTS

Present use, 145 loads per week	
Proposed use, 130 loads per week	
Savings on 15 less loads per week	$ 600.00
Annual Savings	$31,200.00

WAREHOUSE COSTS

Present costs .0225 of meat and delicatessen volume of $800,000 per week	$18,000.00
Proposed charge by Shopwell .0150	12,000.00
Proposed weekly savings	$ 6,000.00
Annual Savings	$312,000.00

RECAPITULATION

Proposed annual savings - Drivers	$128,100.00
Proposed annual savings - Equipment	31,200.00
Proposed annual savings - warehouse	312,000.00
Total Proposed Savings	$471,300.00

Defendant's Exhibit B—Shopwell Sales Agreement

EXHIBIT C-1

Leases for the following numbered stores of The Bohack Corporation may be rejected or disaffirmed.

2192
2207
2345
2381

Defendant's Exhibit B—Shopwell Sales Agreeme

400 Walnut Avenue
Bronx, New York

November 11, 1974

The Bohack Corporation
Bohack Square
48-25 Metropolitan Avenue
Brooklyn, New York 11237

Gentlemen:

The Bohack Corporation, a New York corporation (the "Company") on July 30, 1974 filed a Petition for an Arrangement under Chapter XI of the Bankruptcy Act in the United States District Court, Eastern District of New York (the "Bankruptcy Court"). By order of the Bankruptcy Court, dated July 31, 1974, the Company was continued in possession of its business and ordered and authorized to manage and operate the same as debtor-in-possession (the "DIP").

This letter agreement will serve to state the terms and conditions with respect to the sales to the DIP by Shopwell, Inc. ("Shopwell") of inventory on a continuous revolving basis having an aggregate invoice price to the DIP of $500,000.

1. Sale of Merchandise

Subject to and upon the terms and conditions hereinafter set forth, Shopwell shall sell to the DIP on a

Deft's Exhibit B for Id. 12/12/75 EF. Pg. 1 of 1 continuous revolving basis, merchandise situated from time to time in Shopwell's warehouse facilities having a "cost", as defined below, of $500,000 subject to reasonable fluctuations due to over or under shipments. All of the said inventory shall be sold to and invoiced to the DIP at Shopwell's said "cost", which cost shall be computed as follows:

(a) Dry grocery - at the weighted average cost to Shopwell, as then carried in its computer ("Shopwell Cost") for each item of such merchandise plus (i) for purchases in bulk an additional one (1%) percent of such cost, and (ii) for orders selected by store an additional two (2%) percent of such cost; in addition, Shopwell shall retain all cash discounts earned by it in connection with the purchase by it of such merchandise; a pro-rata portion of all other allowances related to such merchandise not reflected in the Shopwell Cost shall be passed on to DIP, provided that if performance is required in connection with receipt of any allowances, DIP shall have performed to manufacturer's or supplier's satisfaction.

(b) Dairy - at four (4%) percent above average cost to Shopwell, after all allowances have been reflected, F.O.B. Shopwell's warehouse, for orders selected by store, so long as such price to DIP shall be deemed reasonable by Shopwell, and if not deemed reasonable by Shopwell, at a price negotiated between Shopwell and DIP.

(c) Produce - at net average cost to Shopwell delivered to Shopwell's warehouse, plus the pro-rata cost of operating Shopwell's warehouse facility and plus a percentage amount,

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to be agreed upon by Shopwell and DIP, for the use of such facility.

(d) All other merchandise - at prices to be agreed upon between Shopwell and DIP.

Said invoices will be paid by the DIP irrevocably transferring from its account at Manufacturers Hanover Trust Company, to, and depositing in, Shopwell's bank account in the said bank on each Tuesday prior to 3:00 P. M. an amount equal to the aggregate of such invoices with respect to all shipments of inventory made during the preceding week. Payment shall only be deemed to be made when the Bank shall advise by 3:30 P. M., confirmed in writing by 10:00 A. M. on the Wednesday following, that the Shopwell bank account has been irrevocably credited in the amount of the aforementioned payment. All merchandise sold by Shopwell to the DIP hereunder shall be picked up by the DIP at Shopwell's warehouse facility and is being purchased hereunder F.O.B. Shopwell's warehouse facility.

It is understood and agreed that all amounts at any time owing by Bohack to Shopwell under this Agreement shall be secured by the mortgages, liens and security interests created by the Collateral Documents.

2. Representations and Warranties

In order to induce Shopwell to enter into this Agreement and to make the sales herein provided for, the DIP represents and warrants to Shopwell that:

2.1 The DIP and each Subsidiary is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation, has the corporate power to own its assets and to transact the business in which it is engaged, and is duly qualified as a foreign corporation and in good standing under the laws of each jurisdiction in which the conduct of its business or the ownership of its assets requires such qualification.

2.2 The DIP has the corporate power to make and carry out this Agreement and the DIP has taken all necessary corporate action to authorize the purchases hereunder on the terms and conditions of this Agreement and to authorize the execution, delivery and performance of this Agreement, the Collateral Documents and all other instruments and documents provided for herein. No consent of any other party (including stockholders of the DIP or of any Subsidiary) and no consent, license, approval or authorization of, or registration or declaration with, any governmental body, authority, bureau or agency is required in connection with the execution, delivery and performance of this Agreement or the Collateral Documents, or such required approval and consents have been heretofore obtained or will be obtained on or prior to the Effective Date of this Agreement.

2.3 The execution, delivery and performance of this Agreement and the Collateral Documents will not violate any provision of any law or regulation, or of any writ or decree of any court or government instrumentality, or of th

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Certificate of Incorporation or By-laws of the Company or any of its Subsidiaries, or of any mortgage, indenture, assignment, contract, agreement or other undertaking to which the DIP or any of its Subsidiaries is a party or which purports to be binding upon the DIP or any of its Subsidiaries or upon any of their respective assets, and will not result in the creation or imposition of any lien, charge or encumbrance on, or security interest in, any of the assets of the Company or any of its Subsidiaries except as created pursuant hereto.

2.4 There are no actions, suits or proceedings (whether or not purportedly on behalf of the DIP or any of its Subsidiaries) pending or, to the knowledge of the DIP, threatened against or affecting the DIP or any of its Subsidiaries or any of its or their properties (i) which relate to any of the transactions contemplated by this Agreement, or (ii) except as disclosed in Schedule 2.4 hereto, which are not adequately covered by insurance and which, if adversely determined, would have a material adverse effect upon the financial condition, business or operations of the DIP and its Subsidiaries taken as a whole.

2.5 The DIP and its Subsidiaries have good and marketable title to their respective properties and assets, including the properties and assets reflected in the consolidated balance sheet as of January 26, 1974, referred to in Section 2.7 (other than properties and assets disposed of since January 26, 1974 in the ordinary course of business), subject to no mortgage, lien, pledge, charge, security interest or encumbrance of any kind except as permitted by Section 5.2 hereof.

2.6 The Company and its Subsidiaries have filed all Federal and State income tax returns which, to the knowledge of the officers of the DIP, are required to be filed or have obtained valid extensions in respect thereof, and have paid all taxes as shown on said returns and all assessments received by them (except such taxes and assessments as are being contested in good faith and for which appropriate reserves are being maintained) to the extent that such taxes and assessments have become due.

2.7 The consolidated balance sheet of the Company and its Subsidiaries as of January 26, 1974 and the related statements of consolidated earnings and retained earnings and of consolidated changes in the financial position of the Company and its Subsidiaries for the fiscal year then ended, certified by Peat, Marwick, Mitchell & Co., copies of which have been delivered to Shopwell, present fairly the consolidated financial position of the Company and its Subsidiaries as at January 26, 1974 and the consolidated results of the operations and the consolidated changes in financial position of the Company and its Subsidiaries for the fiscal year then ended, and have been prepared in accordance with generally accepted accounting principles consistently applied throughout the period involved. There were no known contingent liabilities or liabilities for taxes of the Company or its Subsidiaries at January 26, 1974 which are not reflected or reserved against in said consolidated balance sheet as of such date.

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3. Conditions of Sales Hereunder

Shopwell shall not be required to make the sales provided for hereunder, if at any time or from time to time, unless the following conditions shall be met:

(a) Shopwell shall have received the Security Agreement.

(b) Shopwell shall have received an opinion of Messrs. Blumberg, Singer, Ross, Gottesman and Gordon, counsel for the DIP, satisfactory in form and substance to Shopwell and its counsel, in respect of the due authorization, execution and delivery of this Agreement and the Security Agreement and the due authorization of the transactions contemplated hereby and by the Collateral Documents.

(c) All proceedings to be taken in connection with the transactions contemplated by this Agreement and Collateral Documents, and all documents incidental thereto, shall be satisfactory in form and substance to Shopwell, and Shopwell shall have received (i) a copy of the resolutions of the Board of Directors of the DIP, certified by the Secretary or an Assistant Secretary of the DIP authorizing the execution, delivery and performance of this Agreement and the Collateral Documents, and (ii) copies of all other documents which Shopwell may reasonably request in connection with the transactions contemplated by this Agreement and the Collateral Documents, all of which shall be in form and substance satisfactory to Shopwell.

3.1 Conditions of Sales. Shopwell shall not make any sales unless (a) the representations and warranties contained in Section 2 hereof shall be true and correct on the date of the making thereof, (b) no Event of Default shall have occurred and be continuing on such date, and (c) if requested by Shopwell, Shopwell shall have received a favorable supplementary opinion of counsel of the DIP, addressed to Shopwell, dated the date of the contemplated transaction, covering such matters incident thereto as Shopwell may reasonably request. Each request for any such sales by the DIP hereunder shall constitute a representation of the DIP as of the date thereof as to the truth of the statements contained in the foregoing sentence.

4. Affirmative Covenants

The DIP covenants and agrees that during the term of this Agreement or so long as any sums of money are owing by the DIP to Shopwell, the DIP will observe all of the following covenants:

4.1 The DIP will furnish to Shopwell (a) as soon as available, and in any event within ninety days after the end of each fiscal year of the DIP, consolidated and consolidating balance sheets of the DIP and its Subsidiaries as of the end of such fiscal year, and consolidated and consolidating statements of earnings and retained earnings and of changes in financial position of the DIP and its Subsidiaries for such fiscal year, all in reasonable detail, prepared in accordance

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with generally accepted accounting principles applied on a basis consistently maintained throughout the period involved, and certified by Peat, Marwick, Mitchell & Co., or other independent public accounts selected by the DIP and satisfactory to Shopwell; (b) as soon as available, and in any event within thirty days after the end of each fiscal month of each fiscal year of the DIP, consolidated and consolidating balance sheets of the DIP and its Subsidiaries as of the end of such fiscal monthly period, and consolidated and consolidating statements of earnings of the DIP and its Subsidiaries for such fiscal monthly period, all in reasonable detail, prepared in accordance with generally accepted accounting principles applied on a basis consistently maintained throughout the period involved, and certified by a principal financial officer or a principal accounting officer of the DIP (subject to normal year-end adjustments); (c) concurrently with the delivery of the financial statements referred to in clause (a) above, a certificate of the independent public accountants who certified such statements, stating that in making the examination necessary for the audit of such financial statements they obtained no knowledge of any default by the DIP in the observance, performance or fulfillment of any of the covenants contained in this Agreement or if they shall have obtained knowledge of any such default, specifying the same; (d) concurrently with the delivery of the financial statements referred to in clauses (a) and (b) above, a certificate of one of the principal executive officers of the DIP to the effect that no Event of Default has occurred and is continuing (or, if any Event of Default shall exist, specifying the nature and status thereof); (e) prior to the close of business on the fifth business day of each week a report on the gross sales of the DIP for the preceding week; (f) promptly after the same are sent, copies of all such proxy statements, financial statements and reports as the DIP shall send to its common stockholders as a class, and promptly after the same are filed, copies of all regular periodic reports which the DIP may file with the Securities and Exchange Commission or any similar or corresponding governmental commission, department or agency substituted therefor; (g) copies of all financial statements and reports filed with the Bankruptcy Court, and (h) from time to time, such additional financial and other information as Shopwell may reasonably request, including, without limitation, monthly inventory figures, itemized lists of purchases, complete quarterly consolidated and consolidating financial statements of the DIP (on a cumulative basis for the current fiscal year and a comparative basis with the prior fiscal year) and reports on operating expenses.

4.2 The DIP will pay and discharge and cause its Subsidiaries to pay and discharge, when due, all of their respective obligations and liabilities except where the same may be contested in good faith, and the DIP will maintain and cause its Subsidiaries to maintain, in accordance with generally accepted accounting principles, appropriate reserves for the accrual of the same.

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4.3 The DIP will promptly give written notice to Shopwell of (i) any event of default by the DIP or any of its Subsidiaries under any obligation for monies owing by the DIP to Shopwell, (ii) any litigation or proceeding affecting the DIP or any of its Subsidiaries in which the amount involved is $25,000 or more whether or not covered by insurance, and (iii) any dispute between the DIP or any of its Subsidiaries and any of their respective suppliers or any governmental regulatory body or any other party which might have a materially adverse effect on the normal business operations of the DIP or its Subsidiares.

4.4 The DIP will maintain, and cause its Subsidiaries to maintain, with financially sound and responsible companies, insurance in such form and in such amounts and against such risks as is customarily carried by companies engaged in the same or similar business and operating like properties.

4.5 The DIP will, and will cause each of its Subsidiaries to (i) continue to engage in business of the same general type as now conducted by it, (ii) maintain its corporate existence, rights and franchises and (iii) keep all properties useful and necessary in the conduct of its business in good working order and condition.

5. Negative Covenants

The DIP covenants and agrees that during the term of this Agreement or so long as any sums of money are owing by the DIP to Shopwell the following negative covenants shall be observed and complied with by the DIP:

5.1 Neither the DIP nor any of its Subsidiaries will create, incur, assume or suffer to exist any indebtedness for borrowed money (including purchase money obligations), except (a) obligations of the DIP to Shopwell, (b) existing indebtedness of any Subsidiary to the DIP or any other Subsidiary, and (c) the indebtedness listed on Schedule 5.1 hereto.

5.2 Neither the DIP nor any of its Subsidiaries will create, assume or suffer to exist any mortgage, lien, pledge, charge, security interest or encumbrance of any kind upon any of its properties or assets, whether now owned or hereafter acquired, except (a) liens for taxes not yet payable or being contested in good faith; (b) deposits or pledges to secure the payment of utilities, workmen's compensation, unemployment insurance or other social security benefits or obligations, or to secure the performance of trade contracts, leases, public or statutory obligations, surety or appeal bonds or other obligations of a like general nature incurred in the ordinary course of business; (c) mechanics', carriers', workmen's, repairmen's or other like liens arising in the ordinary course of business securing obligations which are not overdue for a period longer than thirty days, or which are being contested in good faith; (d) easements, right-of-way, restrictions and other similar encumbrances incurred in the ordinary course of business which in the aggregate are not substantial in amount, and which do not in any case materially detract from the value of the property subject thereto or interfere with the ordinary conduct of the business of the DIP or its Subsidiaries; (e) mortgages or other liens on property or assets of a Subsidiary to secure obligations of such Subsidiary to the DIP; (f) the mortgages and liens listed on Schedule 5.2 hereto, and (g) the mortgages, liens and security interests created by the Collateral Documents.

5.3 Neither the DIP nor any of its Subsidiaries will become or remain liable, directly or indirectly, in connection with the obligations, stock or dividends of any person, firm, corporation or other entity, whether by guarantee, endorsement agreement to purchase or repurchase, agreement to supply or advance funds, or otherwise, except (a) the DIP and its Subsidiaries may make endorsements of negotiable instruments for collection in the ordinary course of business (b) the DIP may be contingently liable in respect of letters of credit issued by Shopwell for its account or in respect of other financial accommodations extended by Shopwell to or for the account of the DIP, and (c) as to the existing contingent liabilities listed in Schedule 5.3 hereto.

5.4 Neither the DIP nor any of its Subsidiaries will make or suffer to exist any investment (by way of transfer of property, contributions to capital, purchase of stock or securities or evidence of indebtedness, acquisition of the business or assets, or otherwise) in, or make or suffer to exist any advances or loans to, any person, firm, corporation or other entity, except that the DIP and its Subsidiaries may continue to hold the investments shown in the financial statements of the Company referred to in Section 2.7 hereof.

5.5 The DIP will not declare or pay any dividends (including dividends payable solely in shares of the capital stock of the DIP) or make any other distribution (whether in cash or in property) on any shares of its capital stock, or purchase, redeem, retire or otherwise acquire for value (or permit any Subsidiary to do so) any shares of its capital stock.

5.6 Neither the DIP nor any of its Subsidiaries will enter into any transaction or merger or consolidation, or liquidate or dissolve itself (or suffer any liquidation or dissolution), nor will the DIP or any of its Subsidiaries, unless they give Shopwell ten days prior written notice of the proposed transaction, convey, sell, lease or otherwise dispose of all or any substantial part of its property, assets or business, except that the DIP and its Subsidiaries may sell their merchandise and inventories in the ordinary course of business.

5.7 Neither the DIP nor any of its Subsidiaries will, unless they give Shopwell ten days prior written notice, (a) enter into, incur or assume any new lease of real or personal property or (b) amend, cancel or modify any existing leases of real or personal property.

5.8 Neither the DIP nor any of its Subsidiaries will make or become obligated to make any capital expenditure if,

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after giving effect thereto, the aggregate amount of all capital expenditures which the DIP and its Subsidiaries have made and are obligated to make in any fiscal monthly period of the DIP will exceed $100,000; provided, however, that to the extent that such expenditures in any such fiscal month shall be less than $100,000, the unused amount may be carried forward and used in any succeeding months.

5.9 Neither the DIP nor any Subsidiary will enter into any arrangement, directly or indirectly, with any person whereby the DIP or any Subsidiary shall sell or transfer any property, real or personal, whether now owned or hereafter acquired, and thereafter rent or lease such property or other property which the DIP or such Subsidiary intends to use for substantially the same purpose or purposes as the property being sold or transferred.

5.10 The DIP will not make any optional prepayment of, or purchase, redeem or otherwise acquire, or amend any provision pertaining to the subordination of the terms of payment of, any Subordinated Indebtedness nor will the DIP make any cash payment of interest or principal on any Subordinated Indebtedness if it has the right of option to make such payment by issuing or delivering shares of its capital stock.

5.11 Neither the DIP nor any of its Subsidiaries will sell, discount or otherwise dispose of its accounts receivable.

5.12 Notwithstanding any other provisions of this Agreement, neither the DIP nor any Subsidiary will, directly or indirectly, (a) transfer, sell, assign or otherwise dispose of any assets to an affiliate; or (b) purchase or acquire assets from an affiliate; or (c) enter into any other transaction directly or indirectly with or for the benefit of an affiliate except for transactions and agreements with affiliates providing for the leasing of any property, the rendering or receipt of any service or the sale or purchase of any product if the monetary or business consideration to the DIP or such Subsidiary arising therefrom would be substantially as advantageous or beneficial to the DIP or such Subsidiary as the monetary or business consideration which would obtain in a comparable arms-length transaction with a person not an affiliate. As used in this Section 5.12, (i) "affiliate" means any person, firm or corporation (other than a Subsidiary) which directly or indirectly controls, or is controlled by, or is under common control with, the DIP; and (ii) "control" (including, with correlative meaning, "controlled by" and "under common control with") means possession, directly or indirectly, or power to direct or cause the direction of management or policies (whether through ownership of voting securities, by contract or otherwise), provided that, in any event (i) any person, firm, corporation or affiliated group which owns directly or indirectly 10% or more of the securities having ordinary voting power for presumed to control such corporation, and (ii) no corporation shall be deemed to be an affiliate solely because the DIP controls such corporation.

6. Events of Default

If any of the following events of default occur and shall not have been remedied:

(a) Failure of the DIP to pay when due any monies owing by the DIP to Shopwell for merchandise sold by Shopwell to the DIP;

(b) Any default by the DIP, called by Manufacturers Hanover Trust Company under the aforementioned Credit Agreement, dated August 5, 1974, as said agreement was modified to the date hereof, or under any of the Collateral Document mentioned in or accompanying the said Agreement;

(c) The termination of the Agreement of Merger, dated November 11, 1974, by and between Bohack and Shopwell or any default by Bohack thereunder;

(d) Failure of the DIP to pay any amounts which become due and payable under the aforementioned Credit Agreement;

(e) Failure or refusal by Manufacturers Hanover Trust Company to extend any credit required under the Credit Agreement, irrespective of the reason therefor;

(f) If any representation or warranty made by the DIP in this Agreement or the Collateral Documents, or by the DIP in connection with any sales made hereunder, or by the DIP or any Subsidiary in any certificate, financial or other statement delivered pursuant hereto, is untrue in any material respect;

(g) Default by the DIP in the observance or performance of any of the covenants or agreements contained in this Agreement or the Collateral Documents;

(h) If the DIP or any Subsidiary shall default in the payment of principal or interest on any obligation for the sale of merchandise by Shopwell to the DIP beyond any period of grace, if any, provided with respect thereto;

(i) There shall be filed a petition to review, notice of appeal or other action challenging the validity or enforceability of this Agreement, the Collateral Documents or the order of the Bankruptcy Court in respect thereto or the rights of Shopwell under any of them; or

(j) The Bankruptcy Court shall enter an order dismissing the proceeding relating to the DIP under Chapter XI of the Bankruptcy Act (including, without limitation, a dismissal contingent or conditioned upon an amended petition pursuant to Chapter X of the Bankruptcy Act) or adjudicating the DIP or any of its Subsidiaries a bankrupt directing that bankruptcy proceedings be proceeded with;

then and in such event (i) all amounts owing by the DIP to Shopwell shall forthwith become immediately due and payable, (ii) all further obligations of Shopwell to sell merchandise

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to the DIP shall forthwith cease and end; and (iii) without limiting any other legal rights and remedies of Shopwell, Shopwell shall have the right to enforce any and all of its rights and remedies against the DIP under provisions of this Agreement, the Security Agreement adverted to herein, and the Agreement of Merger adverted to herein, and all such rights and remedies shall be cumulative.

7. Definitions

As used in this Agreement the following terms shall have the following meanings:

"business day" shall mean a day other than a Saturday, Sunday or legal holiday under the laws of the State of New York.

"Collateral Documents" shall mean the Mortgage and Security Agreement.

"Effective Date" shall mean the date on which the Bankruptcy Court shall enter an order which (a) authorizes the DIP to enter into and perform the terms of this Agreement and the Collateral Documents and (b) provides that any indebtedness of the DIP to Shopwell, including principal and interest, which may not be realized from the collateral securing the repayment thereof shall be given priority as an expense of administration in the Chapter XI proceeding of the DIP.

"Security Agreement" shall mean a security agreement executed and delivered by the DIP in the form of Exhibit A hereto pursuant to which the DIP grants to Shopwell as collateral security for the obligations of the DIP to Shopwell a security interest in all inventory, contract rights, contracts, accounts, accounts receivable, instruments, chattel paper, equipment and general intangibles, whether now owned or hereinafter acquired and wherever located, and the products and proceeds of the foregoing. The recitation in this definition of the assets of the DIP in which a security interest is to be granted is solely for purposes of reference and identification of a document and shall in no way limit or restrict the operative language or the security interests granted pursuant to the Security Agreement.

"Subsidiary" shall mean (a) Topach Corporation, (b) Nobin Island Realty Corp., (c) Gremlin Realty Corp., (d) Selected Delicacies, Inc., (e) Truck Fleets of N.Y., Inc., (f) K.M.S. Bruce, Inc., (g) Parsons Utopia, Inc. and (h) Bohack Super Drugs, Inc., all of which corporations are presently Wholly-Owned by the DIP.

"Wholly-Owned Subsidiary" shall mean any Subsidiary all of the shares of the outstanding capital stock of each class of which (except for directors' qualifying shares, if required by law) are at the time owned by the DIP or by a Wholly-Owned Subsidiary.

8. Miscellaneous

8.1 No Waiver; Cumulative Remedies. No failure or delay on the part of Shopwell in exercising any right, power or privilege hereunder or under any Collateral Document shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege hereunder or thereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided are cumulative and not exclusive of any rights or remedies provided by law.

8.2 Notices. All notices, requests and demands to or upon any party hereto shall be in writing and shall be hand delivered or mailed by registered or certified mail, addressed to such party as follows or to such other address as may be hereafter designated in writing by such party to each of the other parties hereto:

the DIP	The Bohack Corporation 48-25 Metropolitan Avenue Brooklyn, New York Attention: President
Shopwell	Shopwell, Inc. 400 Walnut Avenue Bronx, New York

All notices, requests and demands shall be deemed to have been given when received by the addressee, or if mailed as set forth above, the earlier of when received or five business days after being deposited in the mails.

8.3 Survival of Covenants, Agreements, Representations and Warranties. All covenants, agreements, representations and warranties made in this Agreement, any Collateral Document and in any certificates delivered pursuant hereto shall survive the execution and delivery of this Agreement and the sales hereunder and shall continue in full force and effect until the obligations of the DIP to Shopwell under this Agreement and the Collateral Documents has been paid in full.

8.4 Payment of Fees, Expenses and Taxes. The DIP agrees to pay the duplicating costs and the fees and actual disbursements of counsel to Shopwell in connection with the negotiation and consummation of this Agreement and all matters pertainin hereto. The DIP further agrees to pay other reasonable expenses of Shopwell (including reasonable counsel fees) in connection with the enforcement of the rights of Shopwell under this Agreement, the obligations of the DIP to Shopwell, the Collateral Documents and any instrument or document at any time delivered in connection herewith. The DIP also agrees to pay, and to save Shopwell harmless from, any and all liablities with respect to, or resulting from any delay in paying stamp and other taxes, if any, which may be payable or determined to be payable in connection with the execution and delivery and/or recordation of this Agreement or the Collateral Documents or any modification of any thereof or any waiver or consent under or in respect of any thereof. The obligations of the DIP under this section shall survive the payment of the obligations of the DIP to Shopwell and the termination of this Agreement.

8.5 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the DIP and Shopwell, and their respective successors and assigns, except that the DIP may not assign or transfer its rights hereunder without the prior written consent of Shopwell.

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8.5 Construction. This Agreement, the Collateral Documents and the rights and obligations of the parties hereunder and thereunder shall be governed by, and construed and interpreted in accordance with, the laws of the State of New York.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed and delivered by their proper and duly authorized officers as of the day and year first above written.

THE BOHACK CORPORATION,
Debtor-In-Possession

By________________________________
Vice President

____
Chairman of the Board

SHOPWELL, INC.

By________________________________
Vice President

RECORD PRESS, INC., 95 MORTON ST., NEW YORK, N. Y. 10014—(212) 243-5775